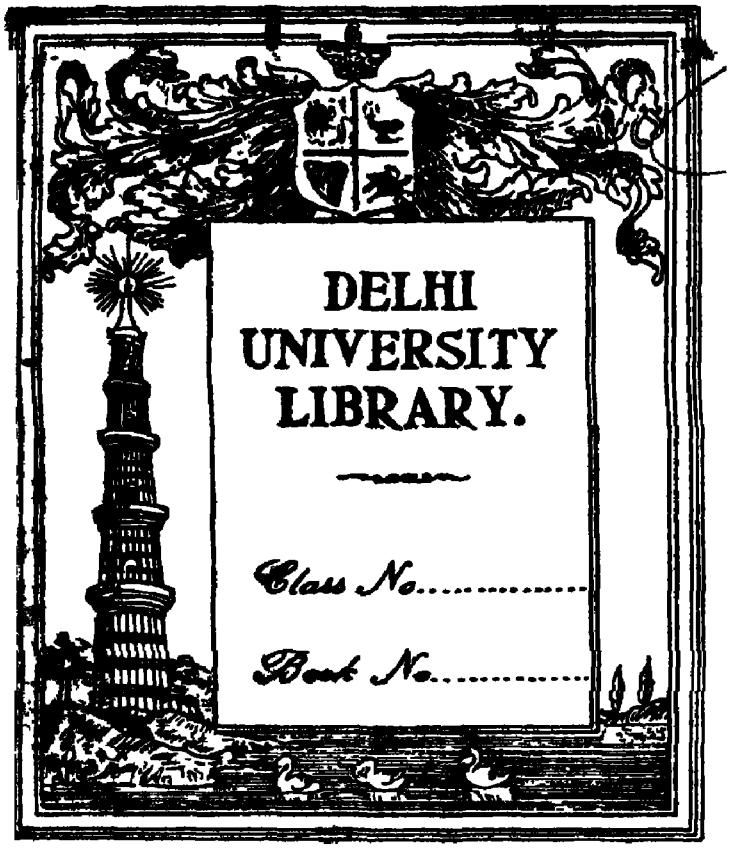

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THE COMMONWEALTH OF AUSTRALIA CONSTITUTION ACT

(AS ALTERED TO 1ST JULY, 1936),

AND THE ACTS ALTERING THE CONSTITUTION.

WITH NOTES, TABLES, INDEXES AND APPENDIXES.

Compiled and Annotated

by

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L. F. JOHNSTON, Commonwealth Government Printer, Canberra.

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PREFACE.

The object which has been kept in view in the preparation of this publication is the production of a volume, of convenient size, containing material likely to be of use in the interpretation of the Australian Constitution, and other material, relating to the Constitution, which is of historical interest or may be useful for reference purposes. Accordingly, there have been included, not only notes of the various Constitutional cases decided by the Courts since 1901, but some general notes containing information concerning the Constitution—such information, for instance, as details of the voting on the Constitution Bill in the various States (then colonies) prior to Federation, the names and terms of office of the various Governors-General and Administrations, the dates of the various sessions of the Parliament of the Commonwealth, particulars concerning the establishment of the various Departments of State of the Commonwealth, and concerning the changes of name and arrangement of those Departments, etc. Certain additional information, referred to hereunder, is given in the five Appendixes.

In the Notes of Cases, an attempt has been made to connect the notes as closely as possible with the particular portion of the section of the Constitution to which each case relates. This has involved, in the case of certain sections divided into paragraphs or placita which have been frequently under review by the Courts, e.g., sections 51, 52, 73, 75 and 76, the interpolation of notes between the various placita. While the adoption of this system has had the disadvantage of causing certain sections to be spread over a number of pages—section fifty-one, for instance, covers, with its notes, twenty-seven pages—it is thought that the balance of convenience is in favour of the adoption of this system as making the notes more readily accessible. The cases included in the notes to each section or placitum have generally been arranged chronologically, the fact of an earlier case being expressly overruled by a later case being generally indicated by a brief note following the reference to the earlier case. The decisions on certain of the placita of section 51 (e.g., (i) trade and commerce, (ii) taxation, and (xxxv) conciliation and arbitration) have been so numerous that it has been found necessary to arrange under sub-headings the notes of cases on those placita.

In the notes of cases, dicta, as well as actual decisions, have been included, the former being usually introduced by such words as "As to whether", or by the word "*Per*" followed by the name of the Justice or Judge. Where the name of a particular Justice or Judge is mentioned, the office held by him at the time of the decision or dictum is indicated, notwithstanding that he may subsequently have held a higher judicial office.

As a general rule, where a case has been the subject of an appeal, only the decision of the final Court of Appeal has been noted. An exception has been made where cases have been taken on appeal from the High Court to the Privy Council, both decisions in such cases being noted.

Certain supplementary notes of cases which relate to general principles of interpretation of the Constitution have been included at the end of the Constitution.

Perhaps one word of warning may be uttered with regard to the use of the notes of cases.

As will be seen from the supplementary notes of cases (pp. 107-110), the principle of implied prohibition, laid down by the High Court as originally constituted, was departed from by the High Court in 1920, in the Engineers' case. In that case the High Court expressly overruled certain cases in which

the principle of implied prohibition had been followed. The fact of these cases having been overruled is indicated in the notes on those cases; but other cases depending on the principle of implied prohibition were not expressly overruled. The notes on those other cases should therefore be read in the light of the principles of interpretation laid down in the Engineers' Case. This case was, later, referred to by Isaacs, *J.* (afterwards *C.J.*), in *Ex parte Nelson* (*No.* 1), (1928) 42 C.L.R. 209, at p. 228, as "our starting-point for constitutional interpretation".

In Appendix A have been included, for historical and reference purposes, the *Federal Council of Australasia Act*, 1885 (from which a number of the legislative powers of the Commonwealth have been copied), and such of the Acts of the Federal Council as are still in force. These Acts have been included for the reason that they are not now readily accessible elsewhere.

Appendix B contains the Acts passed by the State Parliaments referring powers to the Parliament of the Commonwealth. Under section 51 (xxxvii) of the Constitution the Parliament of the Commonwealth has power to legislate with respect to matters so referred. Some of the State Acts, it will be noted, are not at present in force.

Appendix C contains various agreements between the Commonwealth and the States relating to the public debts of the States. Under section 105A of the Constitution it is provided that every agreement with respect to the public debts of the States, which is made in pursuance of that section, is binding upon the Commonwealth and the States concerned, notwithstanding anything in the Commonwealth or State Constitutions or laws; and the Parliament of the Commonwealth is empowered to make laws for the carrying out by the parties thereto of any such agreement.

Appendix D contains copies of the fifty-two Bills for the alteration of the Constitution which have been introduced into the Parliament of the Commonwealth between 1901 and 1935 (inclusive). Of these, sixteen have been submitted to the electors, and three have been passed.

The footnotes to each Bill include the Parliamentary history of the Bill, and, in the case of those which have been submitted to the electors, details of the voting thereon.

Appendix E contains the Statute of Westminster, and the statutory provisions therein referred to. Although the Statute had not, at the date of the preparation of this volume, been adopted by the Commonwealth, the Prime Minister of the Commonwealth had announced (Hansard, 30th April, 1936, p.1042) that the Commonwealth Government intended to introduce into Parliament a Bill for its adoption. Notice of a motion for leave to introduce the Bill was given in the House of Representatives on 19th November, 1936.

The Table of Commonwealth legislation, contained on pages vii to xlvii inclusive, provides a ready means of reference to the legislation of the Commonwealth in relation to each provision of the Constitution with respect to which the Parliament has made laws. This table is taken from the Sessional Volumes of Commonwealth Acts.

References in this publication to "the date of the preparation of this volume" should be read as references to 1st July, 1936.

In conclusion, I desire to express appreciation of the courtesy of the proprietors of the various Law Reports in permitting the use, where possible, of the head-notes to cases appearing in Reports which have been cited.

GEO. S. KNOWLES.

Canberra, 20th November, 1936.

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ADDENDA ET CORRIGENDA.

Page ix.—In second column, opposite section 24, "Northern Territory Representation Act 1922 1925" should be in roman type (not italics).

Page x.—In second column, opposite section 34, "Commonwealth Electoral Act 1918–1934" should be in roman type (not italics)

Page x.- In first column, after "47" omit "83", insert "18".

Page x.—In third column opposite section 83 omit "No. 25, 1925"; insert "No. 21, 1925"

Page xi—At the foot of the page omit the words "(judgment delivered 10th November, 1936)" insert

(1936) 55 C.L.R. 608; 24 A.L.R. 482

Page xii—Insert an asterisk in the second column before each of the following Acts.—

Dried Fruits Act 1928 1935.

Dairy Produce Act 1933 1935

Wheat and Wheat Products Act 1935.

Page xii—At the foot of the page insert the following note

"The *Dried Fruits Act* 1928 1935 was declared by the Privy Council to be invalid as contravening s. 92 of the Constitution. *James* v. *Commonwealth*, 1936 A.C. 578; 55 C.L.R. 1, 42 A.L.R. 333. The decision also affects the validity of the *Dairy Produce Act* 1933 1935 and the *Wheat and Wheat Products Act* 1935

Pages xiv and xv—In third column, after "No. 15, 1935" (wherever occurring) insert "No. 61, 1935"

Page xv—In third column, after "No. 9, 1935" insert "No. 61, 1935"

Page xxxv.- In third column, after "No. 35, 1935 (wherever occurring) insert "No. 36, 1935"

Pages xxxix and xli - In third column, after "No. 45, 1935" insert "No. 61, 1935".

Page xlii—In second column opposite section 5, omit "Lands Acquisition Act 1906 1916", insert "Lands Acquisition Act 1906 1934"

In third column, after "No. 12, 1916" insert—

"No. 5, 1932
No. 45, 1934"

Page xliii.—In second and third columns, after the entries relating to "Wheat Growers Relief Act 1934 1935" insert

"Loan (Farmers' Debt Adjustment) Act 1935 | No. 23, 1935".

In second column, after "Primary Producers" insert "Relief".

Pages lix, lxxx, and c.- In the entries relating to the case of *R* v. *Burgess*: *Ex parte Henry*, omit–

"(High Court judgment, 10th November, 1936)", insert—

"(1936) 55 C.L.R. 608; 24 A.L.R. 482."

Page 43, line 63 of text.—Before the letter " n " at the commencement of the line insert the letter " i ".

Page 58.—In the brackets following the word " establishment " at the end of section 69, insert the letter " *e* ".

Page 59, fifth last line.—Omit " Hign ". Insert " High ".

Page 101.—Before the word " Held " at the commencement of the third paragraph of the notes of cases on section 116, insert " (*b*) ".

Page 112.—In second line of third note omit " delcaration "—insert " declaration ".

Page 213.—Transpose the third and fourth lines of the note immediately following Clause 2 of the Bill.

Page 296.—Omit from the column headed " Page " the figures " 124 "—insert " 105 ".

TABLE OF COMMONWEALTH LEGISLATION PASSED FROM 1901 TO 1935 IN RELATION TO THE SEVERAL PROVISIONS OF THE CONSTITUTION *

NOTE.—This Table is designed to group, under the several provisions of the Constitution, the enactments of the Federal Parliament passed by virtue of or in relation to, those provisions.

Its object is to facilitate reference to all the Commonwealth legislation relating to any particular provision of the Constitution, so that it can be readily ascertained whether and to what extent the legislative power of the Commonwealth has been exercised in relation to that provision or to its subject matter, and (in the case of those provisions of the Constitution which are expressed to have effect until the Parliament otherwise provides) whether any other provision has been made.

The Table does not purport to be either authoritative or exhaustive. Enactments may incidentally derive support from or relate to other provisions of the Constitution than those with which they are primarily connected, but no attempt has been made to tabulate other than direct and obvious relations. For instance, almost every enactment made by virtue of a specific legislative power may derive additional support from section 51 (xxxix), but the only enactments which have been established under that provision are those in which the incidental element appears to predominate.

Short titles of Acts not now in force are printed in italics.

State Acts passed in pursuance of powers conferred by certain sections of the Constitution are enumerated in footnotes.

Section of Constitution	Commonwealth Act		
	Short title	Reference	Sections 1 Act
Covering clause 7	**Repeal of Federal Council Acts**		
	Service and Execution of Process Act 1901–1934	(*a*)	2
	THE SENATE		
Section 8	**Qualification of Electors**		
	Commonwealth Franchise Act 1902	No. 8, 1902	
	Commonwealth Electoral (War time) Act 1917–1919	No. 8, 1917 No. 29, 1919	
	Commonwealth Electoral Act 1918–1934	(*b*)	39
	Commonwealth Electoral (War time) Repeal Act 1920	No. 44, 1920	

(*a*) The *Service and Execution of Process Act* 1901–1934 comprises Act No. 13, 1901, as amended by Acts No. 5, 1905, No. 18, 1912, No. 29, 1918, No. 27, 1922, No. 26, 1924, No. 14, 1928, No. 45, 1931, and No. 45, 1934.

(*b*) The *Commonwealth Electoral Act* 1918–1934 comprises Act No. 27, 1918, as amended by Acts No. 31, 1919, No. 14, 1921, No. 14, 1922, No. 10, 1924, No. 20, 1925, No. 17, 1928, No. 2, 1929, and No. 9, 1934.

*NOTE.—This table is taken from the Sessional Volumes of Commonwealth Acts printed and published by the Commonwealth Government Printer, Canberra.

TABLE OF COMMONWEALTH LEGISLATION FROM 1901 TO 1935, ETC.—*continued.*

Section of Constitution.	Commonwealth Act		
	Short Title	Reference	Sections of Act.
Section 9* 10	**Elections of Senators. Method of Choosing Senators.**		
	Commonwealth Electoral Act 1902–1911	(a)	
	Senate Elections Act 1903–1922	No. 2, 1903 No. 22, 1922	
	Commonwealth Electoral (War-time) Act 1917–1919	No. 8, 1917 No. 29, 1919	
	Commonwealth Electoral Act 1918–1934	(b)	
	Commonwealth Electoral (War-time) Repeal Act 1920	No 44, 1920	
12	**Writs for Senate Elections.**		
	Commonwealth Electoral Act 1902–1911	(a)	86–90
	Senate Elections Act 1903–1922	No. 2, 1903 No 22, 1922	7
	Commonwealth Electoral Act 1918–1934	(b)	59–67
13	**Rotation of Senators.**		
	Constitution Alteration (Senate Elections) 1906	No 1, 1907	
15	**Casual Vacancies.**		
	Commonwealth Electoral Act 1902–1911	(a)	192
	Senate Elections Act 1903–1922	No 2, 1903 No. 22, 1922	
	Commonwealth Electoral Act 1918–1934	(b)	183
16	**Qualifications of Senators.**		
	*Commonwealth Franchise** Act 1902	No 8, 1902	
	Commonwealth Electoral Act 1902–1911	(a)	93, 36, 206A

(a) The *Commonwealth Electoral Act* 1902–1911 comprises Act No 19, 1902, as amended by Acts No. 9, 1903, No 26, 1905, No 18, 1906, No 10, 1907, No 19, 1909, and No 17, 1911 The *Commonwealth Electoral Act* 1902–1911 has been repealed by the *Commonwealth Electoral Act* 1918–1934 *See Gazettes*, 23rd November, 1918, p 2257, 13th March, 1919, p 401, 16th December, 1920, p. 2277 and 9th August, 1934, p 1951

(b) *See* footnote (b), *supra* p viii

* The following State Acts have been passed in pursuance of the powers conferred by section 9 .—

State	Short Title	Reference Number
New South Wales	*Federal Elections Act*, 1900	No 73, 1900
"	Senators' Elections Act, 1903	No 9, 1903
"	Senators' Election Act, 1912	No 75, 1912
Victoria	*Federal Elections Act* 1900	No. 1715
"	Senate Elections (Times and Places) Act 1928	No 3769
Queensland	The Parliament of the Commonwealth Elections Act and The Elections Acts 1885 to 1898 Amendment Act of 1900	64 Vic, No 25
"	The Election of Senators Act of 1903	3 Ed. VII. No. 6
South Australia	The Election of Senators Act, 1903	No 834
Western Australia	Election of Senators Act, 1903	No 11, 1903
"	Election of Senators Amendment Act 1912	No 27, 1913
Tasmania	*The Federal Elections Act*, 1900	64 Vic No. 59
—	*The Election of Senators Act*, 1903	3 Ed. VII. No. 5
	Senate Elections Act 1935	26 Geo. V. No. 3

TABLE OF COMMONWEALTH LEGISLATION FROM 1901 TO 1935, ETC.—*continued.*

Section of Constitution.	Commonwealth Act. Short Title	Reference	Sections of Act
Section 16	**Qualifications of Senators**—*continued.*		
	Commonwealth Electoral Act 1918 1934	(*a*)	69
	THE HOUSE OF REPRESENTATIVES.		
24	**Determination of Number of Members.**		
	Representation Act 1905	No. 11, 1905	
	Representation Act 1916	No. 15, 1916	
	Representation Act 1930	No. 73, 1930	
	Northern Territory Representation Act 1922-1925	No. 18, 1922 No. 21, 1925	3
29*	**Electoral Divisions.**		
	Commonwealth Electoral Act 1902-1911	(*b*)	12-26
	Electoral Validating Act 1906	No. 12, 1906	
	Commonwealth Electoral Act 1918-1934	(*a*)	3, 15-28
	Northern Territory Representation Act 1922-1925	No. 18, 1922 No 21, 1925	7
30	**Qualifications of Electors.**		
	Commonwealth Franchise Act 1902	No. 8, 1902	
	Commonwealth Electoral (War time) Act 1917-1919	No 8, 1917 No. 29, 1919	
	Commonwealth Electoral Act 1918-1934	(*a*)	39
	Commonwealth Electoral (War-time) Repeal Act 1920	No. 44, 1920	
	Northern Territory Representation Act 1922-1925	No. 18, 1922 No. 21, 1925	7
31	**Elections of Members.**		
	Commonwealth Electoral Act 1902-1911	(*b*)	
	Commonwealth Electoral (War-time) Act 1917-1919	No. 8, 1917 No. 29, 1919	
	Commonwealth Electoral Act 1918-1934	(*a*)	
	Commonwealth Electoral (War-time) Repeal Act 1920	No. 44, 1920	
	Northern Territory Representation Act 1922-1925	No. 18, 1922 No. 21, 1925	8

(*a*) *See* footnote (*b*), *supra* p. vii. (*b*) *See* footnote (*a*), *supra* p viii.

* The following State Acts have been passed in pursuance of the powers conferred by section 29:—

State.	Short Title	Reference Number.
New South Wales ..	*Federal Elections Act*, 1900	No. 73, 1900
Victoria . .	*Federal House of Representatives Victorian Electorates Act* 1900	No. 1667
Queensland . ..	The Parliament of the Commonwealth Elections Act and The Elections Acts 1885 to 1898 Amendment Act of 1900	64 Vic. No. 25
Western Australia ..	Federal House of Representatives Western Australian Electorates Act, 1900	64 Vic. No. 6

TABLE OF COMMONWEALTH LEGISLATION FROM 1901 TO 1935, ETC.—*continued.*

Section of Constitution	Commonwealth Act — Short Title	Reference	Sections of Act
Section 32	**Writs for General Elections.**		
33	**Writs for Vacancies**		
	Commonwealth Electoral Act 1902 1911	(*a*)	86–89, 91–93
	Commonwealth Electoral Act 1918–1934	(*b*)	59 67, 141, 144
	Northern Territory Representation Act 1922–1925	No 18, 1922 No 21, 1925	6
34	**Qualifications of Members**		
	Commonwealth Franchise Act 1902	No 8, 1902	
	Commonwealth Electoral Act 1902 1911	(*a*)	95, 96, 208A
	Commonwealth Electoral Act 1918 1934	(*b*)	69
	Northern Territory Representation Act 1922–1925	No 18, 1922 No 21, 1925	4
	BOTH HOUSES OF THE PARLIAMENT		
41	**Right of State Electors**		
	Commonwealth Franchise Act 1902	No 8, 1902	4
	Commonwealth Electoral Act 1918 1934	(*b*)	39 (5)
47	**Questions of Qualifications, Vacancies, or Disputed Elections**		
	Commonwealth Electoral Act 1902 1911	(*a*)	192 208F
	Commonwealth Electoral Act 1918 1934	(*b*)	183 208
	Senate Elections Act 1903 1922	No 2 1903 No 22, 1922	11
83	**Allowances to Members**		
	Parliamentary Allowances Act 1902	No 20, 1902	
	Parliamentary Allowances Act 1907	No 5 1907	
	Parliamentary Allowances Act 1920–1928	No 12, 1920 No 9, 1928	
	Northern Territory Representation Act 1922 1925	No 18, 1922 No 25, 1925	
49	**Privileges of Parliament.**		
	Parliamentary Papers Act 1908–1935	No. 16, 1908 No 64, 1935	
	POWERS OF THE PARLIAMENT.		
51 (i)	**Trade and Commerce—External and Inter-State.**		
	Customs Act 1901–1935	(*c*)	
	Sea Carriage of Goods Act 1904	No 14, 1904	
	Secret Commissions Act 1905	No 10, 1905	
	Commerce (Trade Descriptions) Act 1905 1933	No 16, 1905 No 37, 1926 No 15, 1930 No 13, 1933	
	Australian Industries Preservation Act 1906 1930	(*d*)	

(*a*) *See* footnote (*a*) *supra* p. viii

(*b*) *See* footnote (*b*) *supra* p. viii

(*c*) The *Customs Act* 1901–1935 comprises Act No 6, 1901 as amended by Acts No 36, 1910, No 19 1914, No 10, 1916, No 41, 1920, No 19, 1922, No 12, 1923, No 23, 1925, No 6, 1930, No 7, 1934, No 45, 1934, and No 7, 1935

(*d*) The *Australian Industries Preservation Act* 1906–1930 comprises Act No 9, 1906, as amended by Acts No 5, 1908, No 26, 1909, No 29, 1910, and No 77, 1930

Sections 5 and 8 of the *Australian Industries Preservation Act* 1906–1907 were held by the High Court to be invalid *Huddart Parker & Co Pty Ltd* v *Moorehead*, 8 C.L.R. p 330, 15 A.L.R. 241 These sections were subsequently repealed by the Act of 1910

TABLE OF COMMONWEALTH LEGISLATION FROM 1901 TO 1935, ETC.—*continued.*

Section of Constitution	Commonwealth Act — Short Title	Reference	Sections of Act
Section 51 (i)	**Trade and Commerce—External and Inter-State** – *continued.*		
	Spirits Act 1906–1935	(*a*)	9
	Spirits Act 1933	No 23, 1933	
	Seamen's Compensation Act 1909	No 29, 1909	
	Customs (Inter State Accounts) Act 1910	No 9, 1910	
	Northern Territory Acceptance Act 1910 1919	No 20, 1910 No 24, 1919	13*
	Northern Territory (Administration) Act 1910 1933	No 27, 1910 No. 19, 1926 No 5, 1931 No 7, 1931 No 18, 1933	7, 8, 10
	Seamen's Compensation Act 1911	No 13, 1911	
	Lighthouses Act 1911 1919	No 14, 1911 No 17, 1915 No 6, 1919	
	Commonwealth Bank Act 1911 1932	(*b*)	7c, 7d
	Inter State Commission Act 1912	No 33 1912	
	Navigation Act 1912 1935	(*c*)	
	Norfolk Island Act 1913	No. 15, 1913	15
	Meat Export Trade Commission Act 1914	No 1, 1914	
	Trading with the Enemy Act 1914 1924	No 9, 1914 No 17, 1914 No 20, 1916 No 23, 1924	
	Enemy Contract Annulment Act 1915	No 11, 1915	
	River Murray Waters Act 1915 1934	No 46, 1915 No 20, 1923 No 11, 1934	
	Butter Agreement Act 1920	No 20, 1920	
	War Precautions Act Repeal Act 1920 1934	(*d*)	3
	‡Air Navigation Act 1920	No 50, 1920	
	Commonwealth Shipping Act 1923	No 3 1923	
	Dairy Produce Export Control Act 1924 1935	No 38, 1924 No 15, 1934 No 70, 1935	
	Dried Fruits Export Control Act 1924 1935	No 40, 1924 No 46, 1930 No 15, 1934 No 3, 1935	
	Export Guarantee Act 1924 1934	No 42, 1924 No 4, 1925 No 45, 1934	
	Metal Industry Encouragement Act 1924	No 55, 1924	
	Sea Carriage of Goods Act 1924	No 22, 1924	
	Immigration Act 1901 1935	(*e*)	8AA, 8AB

(*a*) The *Spirits Act* 1906–1935 comprises Act No 21, 1906, as amended by Acts No 14, 1915, No 35 1918, No 6, 1924 No 12, 1932, and No 24, 1935.

(*b*) *See* footnote (*b*), *infra* p xx

(*c*) The *Navigation Act* 1912–1935 comprises Act No 4, 1913, as amended by Acts No. 32, 1919, No. 1, 1921, No 8, 1925, No 8, 1926, No 19, 1934, and No 30, 1935

(*d*) The *War Precautions Act Repeal Act* 1920–1934 comprises Act No 54 1920, as amended by Acts No. 30, 1921 No 39, 1922, No 34, 1924, No 21, 1928, and No 45, 1934

(*e*) *See* footnote (*c*) *infra* p xxvi

* This section has been repealed but a section in almost identical terms has been inserted in the *Northern Territory (Administration) Act* 1910–1933 (*see* s 10)

† The *Navigation Act* 1912–1920 was declared by the High Court to be invalid in so far as it purports to prescribe rules of conduct in respect of ships engaged solely in the domestic trade and commerce of a State. *See Newcastle and Hunter River Steamship Co Ltd* v *Attorney-General for the Commonwealth*, 29 C L R 857, 27 A L R 373

Certain provisions of the *Navigation Act* 1912–1920 with respect to the discharge and engagement of seamen were held to be void for repugnancy to the Merchant Shipping Acts 1894 and 1906 *See Union Steamship Co of New Zealand Ltd* v *Commonwealth*, 30 C L R 130, 31 A L R 209.

‡ The *Air Navigation Act* 1920, s 4, was held by the High Court to be invalid in so far as it purported to give power to make regulations for the purpose of providing for the control of air navigation generally throughout the Commonwealth. (*See R* v *Burgess; Ex parte Henry* (judgment delivered 16th November 1936)

TABLE OF COMMONWEALTH LEGISLATION FROM 1901 TO 1935, ETC.—*continued.*

Section of Constitution.	Commonwealth Act		
	Short Title	Reference	Sections of Act.
Section 51 (i.)	**Trade and Commerce - External and Inter-State**—*continued.*		
	Canned Fruits Export Control Act 1926-1935	No 40, 1926 No 47, 1930 No. 9, 1933 No. 45, 1934 No. 4, 1933	
	Northern Australia Act 1926	No. 16, 1926	53, 57
	Crimes Act 1914-1932	(a)	30J, 30K
	Fresh Fruits Overseas Marketing Act 1927	No. 22, 1927	
	Pearl-shell Overseas Marketing Act 1927	No. 13, 1927	
	Dried Fruits Act 1928–1935	No. 11, 1928 No 59, 1933 No 5, 1935	
	Transport Workers Act 1928 1929	No. 37, 1928 No 3, 1929	
	Wine Overseas Marketing Act 1929–1934	No. 6, 1929 No. 48, 1930 No 45, 1934	
	Cotton Industries Bounty Act 1930 1932	No 13, 1930 No. 17, 1932 No. 75, 1930	9
	Gold Bounty Act 1930 1934	No. 15, 1930 No 45, 1934	13, 14
	Wheat Advances Act 1930 ..	No 78, 1930	
	Beaches, Fishing Grounds and Sea Routes Protection Act 1932	No 73, 1932	
	Colonial Light Dues Collection Act 1932-1934	No. 65, 1932 No. 15, 1934	
	Colonial Light Dues (Rates) Act 1932.	No 66, 1932	
	Colonial Light Dues Appropriation Act 1932	No 67, 1932	
	Queensland Meat Inspection Agreement Act 1932	No. 15, 1932	
	United Kingdom and Australia Trade Agreement Act 1932	No. 57, 1932	
	Sugar Agreement Act 1932 ..	No. 74, 1932	
	Dairy Produce Act 1933-1935	No. 58, 1933 No. 22, 1935	
	Trade Commissioners Act 1933 .	No. 74, 1933	
	Wheat Acquisition Act 1933 .	No. 67, 1933	
	Meat Export Control Act 1935	No. 52, 1935	
	Sugar Agreement Act 1935	No. 59, 1935	
	Whaling Act 1935	No. 62, 1935	
	Wheat and Wheat Products Act 1935 ..	No. 65, 1935	
	Primary Produce Export Organization Act 1935	No. 71, 1935	
(ii.)	**Taxation.**		
	MACHINERY ACTS—		
	Customs Act 1901–1935	(b)	
	Beer Excise Act 1901–1928	(c)	

(a) The *Crimes Act* 1914–1932 comprises Act No 12, 1914, as amended by Acts No. 6, 1915, No 54, 1920, No. 9, 1926, No. 13, 1928, and No 80, 1932.

(b) *See* footnote (c), *supra* p. x.

(c) The *Beer Excise Act* 1901–1928 comprises Act No 7, 1901, as amended by No. 23, 1912, No. 21, 1918, No. 7, 1923, and No. 38, 1928.

TABLE OF COMMONWEALTH LEGISLATION FROM 1901 TO 1935, ETC.—*continued.*

Section of Constitution.	Commonwealth Act.		
	Short Title.	Reference	Sections of Act.
Section 51 (ii.)	**Taxation**—*continued.*		
	MACHINERY ACTS—*continued.*		
	Distillation Act 1901-1934	No. 8, 1901 No. 34, 1918 No. 9, 1923 No. 13, 1925 No. 3, 1931 No. 8, 1934	
	Excise Act 1901-1934	No. 9, 1901 No. 26, 1918 No. 8, 1923 No. 44, 1934	
	Spirits Act 1906-1935	(*a*)	
	Spirits Act 1933 ..	No 23, 1933	
	*Bounties Procedure Act 1907	No. 1, 1908	
	†Land Tax Assessment Act 1910-1934 .	(*b*)	
	Estate Duty Assessment Act 1914-1928	(*c*)	
	‡Income Tax Assessment Act 1922 1934	(*d*)	
	Income Tax Assessment Act (No. 2) 1934	No. 51, 1934	
	Entertainments Tax Assessment Act 1916-1924	No 36, 1916 No. 52, 1924	
	War-time Profits Tax Assessment Act 1917-1918	No. 33, 1917 No. 40, 1918	
	Income Tax Collection Act 1923-1934	No. 28, 1923 No. 36, 1924 No. 45, 1934	
	Taxation of Loans Act 1923	No. 30, 1923	
	New Zealand Re-exports Act 1924	No. 21, 1924	
	Income Tax Assessment (Live Stock) Act 1924	No. 33, 1924	

(*a*) *See* footnote (*a*), *supra* p. xi

(*b*) The *Land Tax Assessment Act* 1910-1934 comprises Act No. 22, 1910, as amended by Acts No 12, 1911, No 37, 1912, No 29, 1914 No 33, 1916, No 29, 1924, No 32, 1924, No. 50, 1926, No. 30, 1927, No 34, 1928, No 1, 1930, No 8, 1930, No 64 1932, and No 11 1934

(*c*) The *Estate Duty Assessment Act* 1914-1928 comprises Act No 22, 1914, as amended by Acts No 29, 1916, No 34, 1922, and No 17, 1928

(*d*) The *Income Tax Assessment Act* 1922-1934 comprises Act No 37, 1922, as amended by Acts No 27, 1923, No 51, 1924, No 28, 1925, No 32, 1927, No 46, 1928, No 11, 1929, No 50, 1930, No 60, 1930, No 23, 1931, No 76, 1932, Nos 17 and 40, 1933, and No 18, 1934

* This Act was, prior to the passing of the *Statute Law Revision Act* 1934 (No 45 of 1934), cited as the *Excise Procedure Act* 1907 The *Statute Law Revision Act* 1934 provides that the *Excise Procedure Act* 1907, as amended by that Act, may be cited as the *Bounties Procedure Act* 1907 (*See* section 1 and First Schedule, *Statute Law Revision Act* 1934) The *Excise Tariff* 1906 (No 16 of 1906) was declared by the High Court to be invalid, *see* judgment in the cases of the *King* v *Barger*, and the *Commonwealth* v *McKay* (Harvester cases), 6 C L R 41 The decision also affected the validity of the *Excise Procedure Act* 1907 (No. 1 of 1908) The provisions of that Act have, however, since been made applicable to claims for bounties under the *Sugar Bounty Act* 1905-1912 (*see* section 9 of that Act), the *Manufactures Encouragement Act* 1908-1914 (*see* section 11), the *Shale Oils Bounties Act* 1910 (*see* section 6), the *Bounties Act* 1907-1912 (*see* section 6), the *Wood Pulp and Rock Phosphate Bounties Act* 1912-1917 (*see* section 7), the *Iron Bounty Act* 1914-1915 (*see* section 11), the *Shale Oil Bounty Act* 1917-1926 (*see* section 6), the *Apple Bounty Act* 1918 (*see* section 6), the *Iron and Steel Bounty Act* 1918-1921 (*see* section 10), the *Iron and Steel Products Bounty Act* 1922-1929 (*see* section 10), the *Sulphur Bounty Act* 1923 (*see* section 10), the *Power Alcohol Bounty Act* 1926 (*see* section 13), the *Cotton Bounty Act* 1926 (*see* section 10), the *Wine Export Bounty Act* 1930-1932 (*see* section 14), the *Cotton Industries Bounty Act* 1930-1932 (*see* section 14), the *Flax and Linseed Bounties Act* 1930-1931 (*see* section 14) and the *Gold Bounty Act* 1930-1931 (*see* section 18).

† Section 36 of the *Land Tax Assessment Act* 1910 1912 was held by the High Court to be invalid *See* judgment of Griffith, *C.J.*, in *Waterhouse* v *Deputy Commissioner of Land Tax for South Australia*, 17 C L.R 665; 20 A.L.R 155

‡ The *Income Tax Assessment Act* 1922-1923 was held to be invalid *in so far as it purported to confer* judicial power on the Board of Appeal *See British Imperial Oil Co* v *Federal Commissioner of Taxation*, 35 C.L.R 422; 31 A.L R. 129 In view of the decision in this case the *Income Tax Assessment Act* 1925 was passed. This Act created a Board of Review with somewhat different powers from those conferred upon the Board of Appeal. The validity of the provisions relating to the Board of Review was upheld by the High Court in the case of *British Imperial Oil Co Ltd* v *Federal Commissioner of Taxation*, 38 C.L R 153; 39 A L R. 330, and, on appeal, by the Privy Council in the case of *Shell Company of Australia Ltd* v *Federal Commissioner of Taxation*, 1931 A.C. 275; 44 C.L.R. 530; 37 A.L R 1.

TABLE OF COMMONWEALTH LEGISLATION FROM 1901 TO 1935, ETC.—*continued.*

Section of Constitution	Commonwealth Act		
	Short Title	Reference	Sections of Act
Section 51 (ii.)	**Taxation** —*continued*		
	MACHINERY ACTS —*continued.*		
	War-time Profits Tax Assessment Act 1924–1926	No 53, 1924 No 27, 1926	
	Income Tax Assessment (Bonus Shares) Act 1926	No. 12, 1926	
	Sales Tax Assessment Act (No 1) 1930 1935	No. 25, 1930 No 62, 1930 No 25, 1931 No 39, 1932 No 64, 1932 No 17, 1933 No 47, 1933 No 16, 1934 No 29, 1934 No 8, 1935 No 45, 1935	
	Sales Tax Assessment Act (No 2) 1930 1935	No 27, 1930 No 64, 1930 No 27, 1931 No 40, 1932 No 64, 1932 No 17, 1933 No 48, 1933 No. 16, 1934 No 30, 1934 No 45, 1935	
	Sales Tax Assessment Act (No 3) 1930 1935	No 29, 1930 No 65, 1930 No 29, 1931 No 41, 1932 No 64 1932 No 17, 1933 No 49 1933 No. 16, 1934 No 45, 1935	
	Sales Tax Assessment Act (No 4) 1930 1935	No 31, 1930 No 66, 1930 No. 31, 1931 No. 42, 1932 No. 64, 1932 No 17, 1933 No. 50, 1933 No 16, 1934 No. 45, 1935	
	Sales Tax Assessment Act (No 5) 1930–1935	No. 33, 1930 No 67, 1930 No 33, 1931 No. 43, 1932 No 64, 1932 No 17, 1933 No 25, 1933 No 51, 1933 No. 16, 1934 No. 62, 1934 No 45, 1935	

TABLE OF COMMONWEALTH LEGISLATION FROM 1901 TO 1935, ETC.—*continued.*

Section of Constitution	Commonwealth Act		
	Short Title	Reference	Sections of Act.
Section 51 (ii.)	**Taxation**—*continued.*		
	MACHINERY ACTS—*continued.*		
	Sales Tax Assessment Act (No. 6) 1930 1935	No. 35, 1930 No. 48, 1930 No. 35, 1931 No. 44, 1932 No. 64, 1932 No. 17, 1933 No. 25, 1933 No. 52, 1933 No. 16, 1934 No. 62, 1934 No 45, 1935	
	Sales Tax Assessment Act (No 7) 1930–1935	No. 37, 1930 No. 69, 1930 No. 37, 1931 No. 45, 1932 No. 64, 1932 No. 17, 1933 No. 25, 1933 No. 53, 1933 No. 16, 1934 No. 62, 1934 No. 45, 1935	
	Sales Tax Assessment Act (No 8) 1930–1935	No 39, 1930 No. 70, 1930 No. 39, 1931 No. 46, 1932 No 64, 1932 No 17, 1933 No. 25, 1933 No. 54, 1933 No. 16, 1934 No 62, 1934 No. 45, 1935	
	Sales Tax Assessment Act (No. 9) 1930–1935	No 41, 1930 No. 71, 1930 No. 41, 1931 No. 47, 1932 No. 55, 1933 No. 9, 1935	
	Income Tax (Salaries) Assessment Act 1930	No 58, 1930	
	Flour Tax Assessment Act 1933 1934	No. 43, 1933 No. 13, 1934	
	Sales Tax Assessment (New Zealand Imports) Act 1933	No. 25, 1933	
	Sales Tax Procedure Act 1934–1935	No. 53, 1934 No. 12, 1935	
	Flour Tax Assessment Act (No. 2) 1934	No. 55, 1934	
	Flour Tax Assessment Act 1934 1935	No 55, 1934 No. 66, 1935	
	Sales Tax Assessment (Fiji Imports) Act 1934	No. 62, 1934	
	Sales Tax Exemptions Act 1935	No. 60, 1935	
	Sales Tax (Securities and Exemptions) Act 1935	No. 61, 1935	

TABLE OF COMMONWEALTH LEGISLATION FROM 1901 TO 1935, ETC.—*continued.*

Section of Constitution	Commonwealth Act. Short Title	Reference	Sections of Act
Section 51 (ii.)	**Taxation**—*continued.*		
	TAXING ACTS—*continued*		
	Income Tax Acts 1930	No. 51, 1930 No. 61, 1930	}
	Income Tax (Salaries) Act 1930	No. 59, 1930	
	Customs Tariff (Canadian Preference) 1931	No. 13, 1931	
	Income Tax Act 1931	No. 24, 1931	
	Customs Tariff Validation Act 1931	No. 53, 1931	
	Excise Tariff Validation Act 1931	No. 54, 1931	
	Customs Tariff (Primage Duties) Validation Act 1931	No 55, 1931	
	Customs Tariff (Special Duties) Validation Act 1931	No. 56, 1931	
	Income Tax Act 1932	No. 75, 1932	
	Customs Tariff (Exchange Adjustment) Act 1933-1934	No. 29, 1933 No. 3, 1934	}
	Customs Tariff (New Zealand Preference) Agreement Act 1933-1934	No 24, 1933 No 2, 1934	}
	Customs Tariff (New Zealand Preference) 1933 1934	No. 26, 1933 No. 2, 1934	}
	Flour Tax Act (No 1) 1933	No 44, 1933	
	Flour Tax Act (No. 2) 1933	No. 45, 1933	
	Flour Tax Act (No 3) 1933	No 46, 1933	
	Income Tax Act 1933	No. 41, 1933	
	Customs Tariff (Papua and New Guinea Preference) 1934	No. 4, 1934	
	Customs Tariff (Canadian Preference) 1934	No 5, 1934	
	Customs Tariff (Primage Duties) 1934	No 6, 1934	
	Customs Tariff Validation Act 1934	No. 23, 1934	
	Customs Tariff (Exchange Adjustment) Validation Act 1934	No 24, 1934	
	Excise Tariff Validation Act 1934	No 25, 1934	
	Customs Tariff (Special Duties) Validation Act 1934	No. 26, 1934	
	Income Tax Act 1934	No. 31, 1934	
	Flour Tax Act (No. 1) 1934 1935	No. 56, 1934 No. 67, 1935	}
	Flour Tax Act (No 2) 1934	No 57, 1934	
	Flour Tax Act (No. 3) 1934–1935	No 58, 1934 No. 68, 1935	}
	Customs Tariff Validation Act 1935	No. 19, 1935	
	Customs Tariff (Exchange Adjustment) Validation Act 1935	No 20, 1935	
	Customs Tariff (Canadian Preference) Validation Act 1935	No. 21, 1935	
	Customs Tariff Validation Act (No. 2) 1935	No 31, 1935	
	Customs Tariff (Exchange Adjustment) Validation Act (No. 2) 1935	No. 32, 1935	
	Income Tax Act 1935	No. 50, 1935	
	Meat Export Charges Act 1935	No 53, 1935	
	Primary Produce Export Charges Act 1935	No. 69, 1935	
	Primary Produce Export Organization Act 1935	No. 71, 1935	
(iii.)	**Bounties.**		
	Sugar Bounty Act 1903	No. 4, 1903	

TABLE OF COMMONWEALTH LEGISLATION FROM 1901 TO 1935, ETC.—*continued*

Section of Constitution	Commonwealth Act		
	Short Title	Reference	Sections of Act
Section 51 (m)	**Bounties**—*continued*		
	Sugar Bounty Act 1905-1912	No 23, 1905 No. 16, 1910 No 12, 1912	
	Bounties Act 1907-1912	No 12, 1907 No. 34, 1912	
	Manufactures Encouragement Act 1908-1914	No. 26, 1908 No 28, 1912 No. 4, 1914	
	Shale Oils Bounties Act 1910	No 23, 1910	
	Sugar Bounty Abolition Act 1912	No 20, 1912	
	Wood Pulp and Rock Phosphate Bounties Act 1912 1917	No 32, 1912 No 28, 1917	
	Sugar Bounty Act 1913	No 7, 1913	
	Iron Bounty Act 1914-1915	No 27, 1914 No 45, 1915	
	Shale Oil Bounty Act 1917-1926	No. 29, 1917 No. 6, 1921 No 40, 1922 No 23, 1923 No 36, 1926	
	Apple Bounty Act 1918	No. 21, 1918	
	Iron and Steel Bounty Act 1918 1921	No. 36, 1918 No. 30, 1921	
	Iron and Steel Products Bounty Act 1922 1934	No 29, 1922 No. 38, 1927 No 32, 1929 No. 28, 1933 No 45, 1934	
	Meat Export Bounties Act 1922	No. 11, 1922	
	Meat Export Bounties Act 1923	No 4, 1923	
	Sulphur Bounty Act 1923 1934	No 21, 1923 No 45, 1934	
	Canned Fruit Bounty Act 1924	No 2, 1924	
	Cattle Export Bounty Act 1924	No. 14, 1924	
	Wine Export Bounty Act 1924 1928	No. 23, 1924 No 10, 1927 No 12, 1928	
	Cotton Bounty Act 1926	No 51, 1926	
	Papua and New Guinea Bounties Act 1926	No 7, 1926	
	Power Alcohol Bounty Act 1926	No. 11, 1926	
	Wine Export Bounty Act 1931-1932	No 10, 1930 No. 2, 1931 No 35, 1932	
	Cotton Industries Bounty Act 1930 1932	No. 13, 1930 No 17, 1932	
	Flax and Linseed Bounties Act 1930 1934	No 45, 1930 No. 43, 1931 No. 45, 1934	
	Gold Bounty Act 1930-1934	No 75, 1930 No 15, 1931 No. 45, 1934	
	Wheat Bounty Act 1931-1932	No. 48, 1931 No. 71, 1932	
	Wheat Bounty (Claims) Act 1932	No 71, 1932	
	Raw Cotton Bounty Act 1934	No. 22, 1934	
	Wine Export Bounty Act 1934	No. 33, 1934	
	Wheat Bounty Act 1934	No. 60, 1934	
	Orange Bounty Act 1935	No 49, 1935	

TABLE OF COMMONWEALTH LEGISLATION FROM 1901 TO 1935, ETC.—*continued.*

Section of Constitution.	Commonwealth Act. Short Title.	Reference	Sections of Act.
Section 51 (iv.)	**Borrowing Money.**		
	Audit Act 1901–1934 ..	(*a*)	55–59
	Naval Loan Act 1900	No. 14, 1909	
	Naval Loan Repeal Act 1910 .	No. 6, 1910	
	Commonwealth Bank Act 1911–1932 .	(*b*)	10, 53–58, 60ABB–60AEC
	Commonwealth Inscribed Stock Act 1911–1933	(*c*)	
	Loan Act 1911 1914	No. 24, 1911 No. 31, 1914	
	Loan Act 1912 1914	No. 22, 1912 No. 31, 1914	
	Loan Act 1913 1914	No. 24, 1913 No. 31, 1914	
	Loan Act 1914	No. 30, 1914	
	Loan Act (No. 2) 1914	No 31, 1914	
	Treasury Bills Act 1914 1915	No. 33, 1914 No. 25, 1915	
	War Loan (United Kingdom) Act 1914–1917	No. 35, 1914 No. 23, 1916 No 24, 1917	
	War Loan Act (No. 1) 1915 .	No. 21, 1915	
	War Loan (United Kingdom) Act 1915–1917	No. 22, 1915 No. 23, 1916 No 24, 1917	
	War Loan Act (No 3) 1915 .	No. 50, 1915	
	Loan Act 1915	No 23, 1915	
	Sugar Purchase Act 1915 1920	No. 31, 1915 No 21, 1917 No. 11, 1920 No 52, 1920	
	Freight Arrangements Act 1915 1917	No. 40, 1915 No. 20, 1917	
	States Loan Act 1916	No 17, 1916	
	War Loan Act (No. 1) 1916	No. 22, 1916	
	War Loan Act (United Kingdom) (No 2) 1916	No 24, 1916	
	States Loan Act 1917	No 16, 1917	
	War Loan Act 1917 .	No. 23, 1917	
	Loan Act 1917	No 30, 1917	
	Loans Sinking Fund Act 1918	No. 6, 1918	
	War Loan Act 1918.. . .	No. 13, 1918	
	War Loan Securities Repurchase Act 1918	No. 14, 1918	
	Loan Act 1918	No. 33, 1918	
	Loan Act 1919	No. 13, 1919	
	Tasmanian Loan Redemption Act 1919	No. 19, 1919	
	Loans Securities Act 1919 .	No. 25, 1919	
	War Loan Act 1920	No. 18, 1920	
	Loan Act 1920	No. 29, 1920	
	War Gratuity Acts 1920	No. 2, 1920 No. 17, 1920	
	Loan Act 1921	No. 9, 1921	
	Loan Act (No. 2) 1921 ..	No 17, 1921	

(*a*) The *Audit Act* 1901–1934 comprises Act No 4, 1901, as amended by Acts No 8, 1906, No 4, 1909, No 6, 1912, No. 32, 1917, No 23, 1920, No 34, 1924, No 18, 1926, and No 45, 1934

(*b*) The *Commonwealth Bank Act* 1911–1932 comprises Act No. 18, 1911, as amended by Acts No 24, 1914, No 43, 1920, No 15, 1924, No 16, 1925, No. 30, 1927, No. 31, 1929, No. 6, 1931, and No 16, 1932.

(*c*) The *Commonwealth Inscribed Stock Act* 1911–1933 comprises Act No. 20, 1911, as amended by Acts No. 40, 1912, No 16, 1913, No 26, 1915, Nos 6 and 7, 1918, No 2, 1927, No. 25, 1932, and No 5, 1933.

TABLE OF COMMONWEALTH LEGISLATION FROM 1901 TO 1935, ETC.—*continued.*

Section of Constitution.	Commonwealth Act.		
	Short Title	Reference.	Sections of Act.
Section 51 (iv.)	**Borrowing Money**—*continued*		
	Funding Arrangements Act 1921	No. 15, 1921	
	Loans Redemption and Conversion Act 1921	No 18, 1921	
	Repatriation Loan Act 1921	No 38, 1921	
	Immigration Loan Act 1922	No 31, 1922	
	Loan Act 1922	No. 7, 1922	
	Loan Act 1923	No. 35, 1923	
	Taxation of Loans Act 1923	No 30, 1923	
	National Debt Sinking Fund Act 1923 1934	No 5, 1923 No 6, 1924 No 8, 1925 No 19, 1928 No. 17, 1929 No. 72, 1930 No. 52, 1934	
	Loan Act (No 1) 1924	No. 3, 1924	
	Loan Act (No. 2) 1924	No. 16, 1924	
	Loan Act (No. 3) 1924	No. 44, 1924	
	Oil Agreement Act 1924	No 7, 1924	
	Seat of Government (Administration) Act 1924 1929	No. 8, 1924 No. 32, 1926 No. 44, 1928 No. 29, 1929	20
	States Loan Act 1924	No. 17, 1924	
	Grafton-South Brisbane Railway Act 1924 1930	No. 54, 1924 No 34, 1926 No. 24, 1929 No 49, 1930	4, 5
	States Loan Act 1925–1927	No. 6, 1925 No. 35, 1926 No 12, 1927	
	Loan Act (No. 1) 1925	No 2, 1925	
	Loan Act (No. 2) 1925	No 15, 1925	
	Loan Act (No 1) 1926	No 33, 1926	
	Oil Agreement Act 1926	No. 14, 1926	3
	Northern Australia Act 1926	No 16, 1926	31
	Development and Migration Act 1926 - 1930	No 20, 1926 No 11, 1930	12
	Commonwealth Housing Act 1927 - 1928	No 35, 1927 No 10, 1928	10
	Loan Act (No. 1) 1927	No 7, 1927	
	Loan Act (No. 2) 1927	No. 27, 1927	
	Financial Agreement Act 1928	No 5, 1928	
	Loan Act (No. 1) 1928	No. 26, 1928	
	Loan Act (No. 2) 1928	No. 33, 1928	
	Financial Agreement Validation Act 1929	No. 4, 1929	
	Loan Act 1929	No. 33, 1929	
	Loan Act 1930	No. 54, 1930	
	Loan Act 1931	No. 12, 1931	
	Debt Conversion Agreement Act 1931	No. 14, 1931	
	Commonwealth Debt Conversion Act 1931	No. 18, 1931	
	Commonwealth Debt Conversion Act (No. 2) 1931	No 1, 1932	
	Debt Conversion Agreement Act (No 2) 1931	No. 52, 1931	
	Loan (Unemployment Relief Works) Act 1932	No. 9, 1932 No. 23, 1932	

TABLE OF COMMONWEALTH LEGISLATION FROM 1901 TO 1935, ETC.—*continued.*

Section of Constitution.	Commonwealth Act. Short Title	Reference	Sections of Act
Section 51 (iv)	**Borrowing Money**—*continued*		
	Loan Act (No. 2) 1934	No. 47, 1934	
	Loan Appropriation (Unemployment Relief) Act 1934-1935	No. 66, 1934 No 2, 1935	
(v)	**Postal, Telegraphic, &c., Services.**		
	Post and Telegraph Act 1901 1934	(*a*)	
	Post and Telegraph Rates Act 1902 1931	(*b*)	
	Commonwealth Electoral Act 1902 1911	(*c*)	206b, 207
	Commonwealth Electoral Act 1918 1934	(*d*)	212, 213
	Wireless Telegraphy Act 1905 1919	No 8, 1905 No 33, 1915 No 4, 1919	
	Referendum (Constitution Alteration) Act 1906 1928	(*e*)	37, 38
	Telegraph Act 1909	No 9, 1909	
	Purchase Telephone Lines Acquisition Act 1911	No 9, 1911	
	Pacific Cable Act 1911	No 25, 1911	
	Navigation Act 1912-1935	(*f*)	95 97
	Wireless Agreement Act 1924	No 24, 1924	
	Northern Australia Act 1926	No 16, 1926	55
	Crimes Act 1914 1932	(*g*)	3 3B
	Wireless Agreement Act 1927	No 37, 1927	
	Australian Broadcasting Commission Act 1932	No 14, 1932	
(vi)	**Naval and Military Defence.**		
	GENERAL —		
	Naval Agreement Act 1903 1912	No 8, 1903 No 10, 1912	
	Defence Act 1903 1934	(*h*)	
	Telegraph Act 1909	No 9, 1909	
	Naval Loan Act 1909	No 14, 1909	
	Naval Loan Repeal Act 1910	No 6, 1910	
	Naval Defence Act 1910-1934	No 30, 1910 No 16, 1911 No. 21, 1912 No. 45, 1918 No 45, 1934	
	Defence Lands Purchase Act 1913	No. 18, 1913	
	Control of Naval Waters Act 1918	No. 28, 1918	
	Deceased Soldiers' Estates Act 1918 1919	No. 44, 1918 No 33, 1919	
	Defence Retirement Act 1922	No. 9, 1922	
	Air Force Act 1923	No 33, 1923	

(*a*) The *Post and Telegraph Act* 1901–1934 comprises Act No 12, 1901, as amended by Acts No 28, 1910 No 30, 1912, No 23, 1919, No 14, 1910, No 17, 1923, and No. 45, 1934

(*b*) The *Post and Telegraph Rates Act* 1902–1931 comprises Act No. 13, 1902, as amended by Acts No 10, 1906, No 24, 1910, No 8 1911, No 23, 1915, No 24, 1918, No 27, 1920, No 16, 1923, No 12, 1924, No 29, 1930, and No 1, 1931

(*c*) *See* footnote (*a*), *supra* p. xiii

(*d*) *See* footnote (*b*), *supra* p. xiii

(*e*) The *Referendum (Constitution Alteration) Act* 1906–1928 comprises Act No 11, 1906, as amended by Acts No 20, 1909, No 31, 1910, No 17, 1912, No 35, 1912 No 33 1915, No 14, 1919, No. 23, 1921, and No. 42, 1928

(*f*) *See* footnote (*c*), *supra* p xi

(*g*) *See* footnote (*a*), *supra* p xii.

(*h*) The *Defence Act* 1903–1934 comprises Act No. 20, 1903, as amended by Acts No 12, 1904, No 15, 1909, No 30, 1911, No 37, 1910, No 15, 1911, No 5, 1912, No 36, 1914, No 3, 1915, No 36, 1917, No 66, 1918, No 47, 1918, No 1, 1927, No 50, 1932, and No. 45, 1934.

TABLE OF COMMONWEALTH LEGISLATION FROM 1901 TO 1935, ETC.—*continued.*

Section of Constitution	Commonwealth Act — Short Title	Reference	Sections of Act.
Section 51 (vi)	**Naval and Military Defence**—*continued*		
	WAR LEGISLATION—		
	Trading with the Enemy Act 1914–1921	No. 9, 1914 No 17, 1914 No. 20, 1916 No. 23, 1921	
	War Precautions Act 1914–1918	(*a*)	
	Patents, Trade Marks and Designs Act 1914–1915	No. 15, 1914 No. 16, 1914 No 8, 1915	
	Enemy Contracts Annulment Act 1915	No. 11, 1915	
	War Pensions Act 1914 1916	No. 34, 1914 No. 28, 1915 No. 25, 1916	
	War Census Act 1915 1916	No. 20, 1915 No. 32, 1915 No. 21, 1916	
	Patents Act (Partial Suspension) Act 1916	No. 13, 1916	
	Australian Soldiers' Repatriation Fund Act 1916	No. 7, 1916	
	Military Service Referendum Act 1916	No. 27, 1916	
	Daylight Saving Act 1916	No. 40, 1916	
	Unlawful Associations Act 1916-1917	No. 41, 1916 No. 14, 1917	
	Wheat Storage Act 1917	No. 15, 1917	
	Daylight Saving Repeal Act 1917	No. 35, 1917	
	Australian Soldiers' Repatriation Act 1917 1918	No 37, 1917 No. 15, 1918	
	Defence (Civil Employment) Act 1918 1922	No. 17, 1918 No. 6, 1922	
	War Service Homes Act 1918 1935	(*b*)	
	War Service Homes Agreement Act 1927	No 33, 1927	
	War Service Homes Agreement Act 1932	No. 56, 1932	
	War Service Homes (South Australia) Agreement Act 1934	No 12, 1934	
	War Service Homes Commissioner Validating Act 1921	No. 4, 1921	
	Moratorium Act 1919	No. 2, 1919	
	Commercial Activities Act 1919	No 3, 1919	
	Treaty of Peace (Germany) Act 1919 1920	No. 20, 1919 No 39, 1920	
	Termination of the Present War (Definition) Act 1919	No. 26, 1919	
	Land, Mining, Shares and Shipping Act 1919	No 27, 1919	
	Legal Proceedings Control Act 1919	No. 30, 1919	
	War Gratuity Acts 1920	No 2, 1920 No. 17, 1920	
	Australian Imperial Force Canteens Funds Act 1920	No 3, 1920	
	Australian Soldiers' Repatriation Act 1920-1935	(*c*)	
	Treaties of Peace (Austria and Bulgaria) Act 1920	No 40, 1920	

(*a*) The *War Precautions Act* 1914–1918 comprises Act No 10, 1914, as amended by Acts No 2, 1915, No. 39, 1915, No 3, 1916, and No 37, 1918.

(*b*) The *War Service Homes Act* 1918–1935 comprises Act No 43, 1918, as amended by Acts No. 28, 1919, No 35, 1920, No. 18, 1923, No 26, 1925, No 47, 1926, No 17, 1927, No. 13, 1929, Nos 6 and 68, 1932, No 63, 1934, and No 54, 1935

(*c*) The *Australian Soldiers' Repatriation Act* 1920–1935 comprises Act No 6, 1920, as amended by Acts No. 34, 1921, No. 23, 1922, No. 14, 1929, No. 74, 1930, Nos. 10 and 47, 1931, No 32, 1934, and No. 58, 1935.

TABLE OF COMMONWEALTH LEGISLATION FROM 1901 TO 1935, ETC.—*continued.*

Section of Constitution	Commonwealth Act. Short Title.	Reference.	Sections of Act
Section 51 (xxii.)	**Divorce and Matrimonial Causes.**		
	Matrimonial Causes (Expeditionary Forces) Act 1919	No. 15, 1919	
(xxiii.)	**Invalid and Old-age Pensions.**		
	Invalid and Old-age Pensions Act 1908–1935	(*a*)	
(xxiv.)	**Service and Execution of Process.**		
	Service and Execution of Process Act 1901–1934	(*b*)	
	Service and Execution of Process Act 1905	No 5, 1905	
(xxv.)	**Recognition of State Laws, &c.**		
	State and Territorial Laws and Records Recognition Act 1901–1928	No 5, 1901 No 15, 1928	
(xxvi.)	**People of any Race— other than Aboriginal.**		
	Pacific Island Labourers Act 1901–1934	No. 16, 1901 No. 22, 1906 No 45, 1934	
	Post and Telegraph Act 1901 1934	(*c*)	6
	Commonwealth Franchise Act 1902	No 8, 1902	4
	Sugar Bounty Act 1903	No. 4, 1903	2
	Sugar Bounty Act 1905–1912	No. 23, 1905 No 16, 1910 No. 12, 1912	
	Naturalization Act 1903–1917	No. 11, 1903 No 25, 1917	5
	Bounties Act 1907–1912	No. 12, 1907 No 31, 1912	3, 4
	Invalid and Old-age Pensions Act 1908–1935	(*a*)	16, 21
	Commonwealth Electoral Act 1918–1934	(*d*)	39
(xxvii.)	**Immigration and Emigration.**		
	Pacific Island Labourers Act 1901–1934	No 16, 1901 No. 22, 1906 No. 45, 1934	
	Immigration Act 1901–1935	(*e*)	
	Contract Immigrants Act 1905	No. 19, 1905	
	Emigration Act 1910	No 26, 1910	
	Passports Act 1920	No. 46, 1920	
	War Precautions Act Repeal Act 1920–1934	(*f*)	9
	Development and Migration Act 1926–1930	No. 29, 1926 No 11, 1930	
(xxviii.)	**Influx of Criminals.**		
	Immigration Act 1901–1935	(*e*)	3 (*ga*), (*gb*)

(*a*) The *Invalid and Old-age Pensions Act* 1908–1935 comprises Act No. 17, 1908, as amended by Acts No. 8, 1909, No 21, 1909, No 27, 1912, No. 32, 1910, No 22, 1917, No 22, 1910, No. 53, 1920, No 15, 1923, No 27, 1925, No. 44, 1926, No 31, 1928, Nos 10 and 46, 1931, Nos. 35 and 64, 1932, Nos 17 and 56, 1933, and No 1, 1935.

(*b*) *See* footnote (*a*), *supra* p vii

(*c*) *See* footnote (*a*), *supra* p xxii.

(*d*) *See* footnote (*b*), *supra* p. vii.

(*e*) The *Immigration Act* 1901–1935 comprises Act No 17, 1901, as amended by Acts No 17, 1905, No 25, 1908, No 10, 1910, No 38, 1912, No 51, 1920, No 47, 1924, No. 7, 1925, No 50, 1930, No 26, 1932, No 37, 1933, and No 13, 1935

(*f*) *See* footnote (*d*), *supra* p xi

TABLE OF COMMONWEALTH LEGISLATION FROM 1901 TO 1935, ETC —*continued.*

Section of Constitution	Commonwealth Act. Short Title	Reference.	Sections of Act.
Section 51 (xxix.)	**External Affairs.**		
	Extradition Act 1903-1934 ..	No. 12, 1903 No. 35, 1933 No. 45, 1934	
	High Commissioner Act 1909 .	No. 22, 1909	
	High Commissioner Act 1932 .	No. 34, 1932	
	Nauru Island Agreement Act 1919 ..	No 8, 1919	
	Nauru Island Agreement Act 1932	No 51, 1932	
	Air Navigation Act 1920	No. 50, 1920	
	Treaties of Washington Act 1922 ..	No 4, 1922	
	London Naval Treaty Act 1930 .	No. 44, 1930	
	United Kingdom and Australia Trade Agreement Act 1932	No 57, 1932	
xxx.)	**Relations with Pacific Islands.**		
	Pacific Island Labourers Act 1901 1934	No. 16, 1901 No. 22, 1906 No. 45, 1934	
	Nauru Island Agreement Act 1919 .	No 8, 1919	
	Nauru Island Agreement Act 1932	No. 51, 1932	
	New Guinea Act 1920 1935 ..	No 25, 1920 No. 15, 1926 No. 51, 1932 No. 63, 1935	
xxi.)	**Acquisition of Property for Public Purposes.**		
	Property for Public Purposes Acquisition Act 1901	No 13, 1901	
	Patents Act 1903-1935 .	(*a*)	19
	Seat of Government Act 1904 . .	No 7, 1904	4
	Trade Marks Act 1905 1934	(*b*)	14
	Copyright Act 1905	No 23, 1905	12
	Designs Act 1906 1934	No. 4, 1906 No. 14, 1912 No 53, 1932 No 70, 1932 No. 36, 1933 No. 42, 1934 No. 45, 1934	11
	*Lands Acquisition Act 1906-1934	No 13, 1906 No. 12, 1916 No 5, 1932 No. 45, 1934	
	Seat of Government Act 1908 .	No 24, 1908	6
	Seat of Government Acceptance Act 1909	No 23, 1909	10
	Seat of Government (Administration) Act 1910–1933	No 25, 1910 No. 2, 1930 No. 9, 1931 No 4, 1933	10
	Seat of Government (Administration) Act 1930–1935	No. 2, 1930 No 67, 1934 No. 39, 1935	
	Northern Territory (Administration) Act 1910 1933	No. 27, 1910 No 19, 1926 No 5, 1931 No. 7, 1931 No 18, 1933	9

(*a*) *See* footnote (*c*), *supra* p xxv.
(*b*) *See* footnote (*d*), *supra* p xxv.
* Section 20 of the *Lands Acquisition Act* 1906–1916 was declared *to be ultra vires* the Commonwealth Parliament. *See The Commonwealth* v. *The State of New South Wales*, 33 C L R 1; 29 A.L R 401

TABLE OF COMMONWEALTH LEGISLATION FROM 1901 TO 1935, ETC.—*continued.*

Section of Constitution	Commonwealth Act		
	Short Title.	Reference.	Sections of Act.
Section 51 (xxxix.)	**Matters incidental to Execution of Powers**—*continued.*		
	Solicitor-General Act 1916	No. 28, 1916	
	Commonwealth Public Works Committee Act 1917	No. 26, 1917	
	Committee of Public Accounts Act 1917..	No. 27, 1917	
	Sugar Industry Commission Act 1919 .	No. 16, 1919	
	Arbitration (Public Service) Act 1920–1934	No. 28, 1920 No. 1, 1928 No. 25, 1929 No. 45, 1934	
	Westralian Farmers' Agreement Act 1920	No. 30, 1920	
	Westralian Farmers' Agreement Act 1921	No. 2, 1921	
	Air Navigation Act 1920	No. 50, 1920	
	War Precautions Act Repeal Act 1920–1934	(*a*)	
	Returned Soldiers' Woollen Company Loan Act 1921	No 37, 1921	
	War Precautions (Coal) Act 1921 ..	No. 22, 1921	
	Commonwealth Public Service Act 1922–1934	(*b*)	
	Defence Retirement Act 1922 .	No. 9, 1922	
	South Australian Farmers' Agreement Act 1922	No. 35, 1922	
	Superannuation Act 1922–1934	No. 33, 1922 No. 45, 1924 No 22, 1930 No. 10, 1931 No. 45, 1934	
	Treaties of Washington Act 1922 ..	No. 4, 1922	
	Advances to Settlers Act 1923 .	No. 19, 1923	
	Agreements Validation Act 1923 ..	No. 31, 1923	
	Commonwealth Shipping Act 1923 ..	No. 3, 1923	
	Income Tax Collection Act 1923–1924	No. 28, 1923 No. 36, 1924	
	Main Roads Development Act 1923–1925	No. 2, 1923 No. 5, 1924 No. 17, 1925	
	Wheat Pool Advances Act 1923 ..	No. 32, 1923	
	Dairy Produce Export Control Act 1924–1935	No. 38, 1924 No. 45, 1934 No. 70, 1935	
	Dried Fruits Advances Act 1924–1926	No. 20, 1924 No. 13, 1926	
	Dried Fruits Export Control Act 1924–1935	No. 40, 1924 No. 46, 1930 No. 45, 1934 No. 3, 1935	
	Export Guarantee Act 1924–1934	No. 42, 1924 No. 4, 1925 No. 45, 1934	
	Hop Pool Agreement Act 1924 ..	No. 9, 1924	
	Meat Industry Encouragement Act 1924	No. 55, 1924	
	Oil Agreement Act 1920	No. 13, 1920	
	Oil Agreement Act 1924	No. 7, 1924	
	Oil Agreement Act 1926	No. 14, 1926	

(*a*) *See* footnote (*d*), *supra* p. xi

(*b*) The *Commonwealth Public Service Act* 1922–1934 comprises Act No. 21, 1922 and Acts No. 46, 1924, No. 41, 1928, No. 19, 1930, No. 21, 1931, No. 72, 1932, No. 38, 1933 and No. 46, 1934.

TABLE OF COMMONWEALTH LEGISLATION FROM 1901 TO 1935, ETC.—*continued*.

Section of Constitution.	Commonwealth Act.		
	Short Title.	Reference	Sections of Act.
Section 51 (xxxix.)	**Matters Incidental to Execution of Powers**—*continued*		
	Canned Fruits Export Control Act 1926-1935	No. 40, 1926 No. 47, 1930 No. 9, 1933 No. 15, 1934 No. 4, 1935	
	Development and Migration Act 1926 1930	No. 29, 1926 No. 11, 1930	
	Australian Institute of Anatomy Agreement Act 1924 1933	No. 19, 1924 No. 44, 1931 No. 12, 1933	
	Peace Officers Act 1925	No. 12, 1925	
	Precious Metals Prospecting Act 1926	No. 4, 1926	
	Petroleum Prospecting Act 1926 1927	No. 5, 1926 No. 31, 1926 No. 16, 1927	
	Science and Industry Endowment Act 1926	No. 21, 1926	
	Science and Industry Research Act 1920 1926	No. 22, 1920 No. 20, 1926	
	Fresh Fruits Overseas Marketing Act 1927	No. 22, 1927	
	Pearl-shell Overseas Marketing Act 1927	No. 13, 1927	
	Wire and Wire Netting Act 1927–1932	No. 15, 1927 No. 55, 1932	
	Officers' Rights Declaration Act 1928	No. 16, 1928	
	Wine Overseas Marketing Act 1929–1934	No. 6, 1929 No. 48, 1930 No. 45, 1934	
	Economic Research Act 1929	No. 9, 1929	
	Solar Observatory Fund Act 1930-1932	No. 5, 1930 No. 4, 1931 No. 28, 1932	
	Forestry Bureau Act 1930-1932	No. 16, 1930 No. 27, 1932	
	Commonwealth Employees' Compensation Act 1930	No. 24, 1930	
	London Naval Treaty Act 1930	No. 44, 1930	
	Financial Emergency Act 1931–1935	No. 10, 1931 No. 47, 1931 No. 35, 1932 No. 6, 1933 No. 17, 1933 No. 16, 1934 No. 35, 1935 No. 36, 1935	
	Financial Emergency (State Legislation) Act 1932	No. 11, 1932	
	Financial Relief Act 1932-1935	No. 64, 1932 No. 17, 1933 No. 47, 1935 No. 16, 1934	
	Financial Relief Act 1934-1935	No. 36, 1935 No. 47, 1935 No. 57, 1935	

(a) The ... 8, 1907, ... No. 30, 1907...
(b) See ...
(c) See ...
* Per... is part... to it ... the ... Act

TABLE OF COMMONWEALTH LEGISLATION FROM 1901 TO 1935, ETC.—*continued.*

Section of Constitution.	Commonwealth Act		
	Short Title	Reference.	Sections of Act.
Section 51 (xxxix.)	**Matters incidental to Execution of Powers** *continued*		
	Queensland Meat Inspection Agreement Act 1932	No. 15, 1932	
	Sugar Agreement Act 1932 . .	No. 74, 1932	
	Silver Agreement Act 1933 . .	No 62, 1933	
	Cockatoo Island Dockyard Agreement Act 1933	No. 73, 1933	
	Fruit Growers' Relief Act 1933 .	No. 39, 1933	
	Migrant Settlement Agreement Act 1933	No 32, 1933	
	Petrol Commission Act 1933 . .	No 2, 1933	
	Transferred Officers' Pensions Act 1934	No. 34, 1934	
	Statute Law Revision Act 1934	No 45, 1934	
	Northern Australia Survey Act 1934 .	No 61, 1934	
	Carriage by Air Act 1935 .	No 18, 1935	
	Sanctions Act 1935	No 48, 1935	
	Meat Export Control Act 1935 .	No 52, 1935	
	Sugar Agreement Act 1935 . .	No 59, 1935	
Section 52 (i.)	**Seat of Government, and Places Acquired for Public Purposes.**		
	Property for Public Purposes Acquisition Act 1901	No 13, 1901	47, 51, 60, &c
	Seat of Government Act 1904	No 7, 1904	
	Lands Acquisition Act 1906–1934	No. 13, 1906 No 12, 1916 No 5, 1932 No 45, 1934	58, 62, 63, 64, 66
	United Kingdom and Australia Trade Agreement Act 1932	No 57, 1932	
	Seat of Government Act 1908 . .	No 24, 1908	
	Seat of Government Acceptance Act 1909	No. 23, 1909	
	Seat of Government Acceptance Act 1922	No 28, 1922	
	Seat of Government (Administration) Act 1910 1933	No 25, 1910 No 2, 1930 No 9, 1931 No 4, 1933	
	Lands Acquisition Act 1912 . .	No 39, 1912	
	Seat of Government (Administration) Act 1924 1929	No 8, 1924 No. 32, 1926 No 44, 1928 No. 29, 1929	
	Seat of Government (Administration) Act 1930–1935	No. 2, 1930 No 67, 1934 No 39, 1935	
	Seat of Government Railway Act 1928 . .	No 40, 1928	
Section 52 (ii.)	**Matters relating to Transferred Departments.**		
	Customs Act 1901–1935 . . .	(*a*)	
	Beer Excise Act 1901–1928	(*b*)	
	Distillation Act 1901 1934 .	No. 8, 1901 No. 34, 1918 No. 9, 1923 No. 3, 1931 No. 8, 1934	
	Excise Act 1901–1934 .	No. 9, 1901 No. 26, 1918 No. 8, 1923 No. 44, 1934	

(*a*) *See* footnote (*c*), *supra* p. xl. (*b*) *See* footnote (*c*), *supra* p. xli.

TABLE OF COMMONWEALTH LEGISLATION FROM 1901 TO 1935, ETC.—*continued.*

Section of Constitution.	Commonwealth Act		
	Short Title	Reference	Sections of Act
Section 52 (ii.)	**Matters relating to Transferred Departments** —*continued*		
	Post and Telegraph Act 1901 1931	(*a*)	
	Commonwealth Public Service Act 1902 1918	(*b*)	60–62
	Post and Telegraph Rates Act 1902 1931	(*c*)	
	Defence Act 1903–1934	(*d*)	
	Wireless Telegraphy Act 1905 1919	No 8, 1905 No 33, 1915 No. 4, 1919	
	Spirits Act 1906 1935	(*e*)	
	Spirits Act 1933	No 23, 1933	
	Naval Defence Act 1910 1934	No 30, 1910 No 16, 1911 No 21, 1912 No. 45, 1918	
	Purchase Telephone Lines Acquisition Act 1911	No 9, 1911	
	Pacific Cable Act 1911	No 25, 1911	44, 45, 48
	Commonwealth Public Service Act 1922 1934	(*f*)	
	Statistical Bureau (Tasmania) Act 1924	No 48, 1924	
	Australian Broadcasting Commission Act 1932	No 14, 1932	
	THE EXECUTIVE GOVERNMENT		
65	NUMBER OF MINISTERS OF STATE		
	Ministers of State Act 1915	No 18, 1915	
	Ministers of State Act 1917	No. 40, 1917	
	Ministers of State Act 1935	No 35, 1935	
66	SALARIES OF MINISTERS OF STATE		
	Ministers of State Act 1915	No 18, 1915	
	Ministers of State Act 1917	No 40, 1917	
	Ministers of State Act 1935	No 35, 1935	
67	**Appointment of Officers.***		
	Commonwealth Public Service Act 1902 1918	(*g*)	
	Quarantine Act 1908 1924	(*h*)	9, 9A
	Papua Act 1905 1934	No 9, 1905 No. 32, 1920 No. 25, 1924 No. 45, 1934	
	Defence Act 1903 1934	(*i*)	63
	High Commissioner Act 1909	No 22, 1909	8, 9
	High Commissioner Act 1932	No 34, 1932	
	Northern Territory Acceptance Act 1910 1919	No. 20, 1910 No 24, 1919 No 27, 1910 No 19, 1926	9, 11, 12†
	Northern Territory (Administration) Act 1910 1933	No 5, 1931 No. 7, 1931 No. 18, 1933	17, 17A, 19
	Kalgoorlie to Port Augusta Railway Act 1911–1912	No. 7, 1911 No 3, 1912	16
	Commonwealth Bank Act 1911 1932	(*j*)	16, 35F

(*a*) *See* footnote (*a*), *supra* p xxii
(*b*) *See* footnote (*b*), *supra* p. xxx
(*c*) *See* footnote (*b*) *supra* p xxii
(*d*) *See* footnote (*h*), *supra* p xxii
(*e*) *See* footnote (*a*), *supra* p xi
(*f*) *See* footnote (*b*), *supra* p xxxii.
(*g*) *See* footnote (*b*), *supra* p xxx
(*h*) *See* footnote (*b*), *supra* p xxiv
(*i*) *See* footnote (*h*), *supra* p xxii
(*j*) *See* footnote (*b*), *supra* p xx.

* Acts such as the *Audit Act* 1901–1934 and the *Tariff Board Act* 1921–1934, which provide, *inter alia*, for the constitution of a particular office or board, are not shown hereunder.

† These sections have been repealed *See* Acts Nos 16 and 19 of 1926.

TABLE OF COMMONWEALTH LEGISLATION FROM 1901 TO 1935, ETC.—*continued.*

Section of Constitution	Commonwealth Act		
	Short Title	Reference	Sections of Act
Section 67	**Appointment of Officers** *continued*		
	Navigation Act 1912-1935 ..	(*a*)	330
	Norfolk Island Act 1913 1935	No. 15, 1913 No. 14, 1935	7, 9
	Pine Creek to Katherine River Railway Act 1913	No. 21, 1913	14
	River Murray Waters Act 1915 1934	No. 16, 1915 No. 20, 1923 No. 11, 1934	
	Commonwealth Public Service (Acting Commissioner) Act 1916	No. 9, 1916	
	Commonwealth Railways Act 1917-1925	No. 31, 1917 No. 11, 1925	46–51
	Defence (Civil Employment) Act 1918-1922	No. 17, 1918 No. 6, 1922	10, 15
	War Service Homes Act 1918 1935	(*b*)	15
	War Service Homes Commissioner Validating Act 1921	No. 1, 1921	
	New Guinea Act 1920 1935	No. 25, 1920 No. 15, 1926 No. 51, 1932 No. 63, 1935	12
	Australian Soldiers' Repatriation Act 1920 1935	(*c*)	
	Commonwealth Public Service Act 1922-1934	(*d*)	
	Superannuation Act 1922 1934	No. 33, 1922 No. 45, 1924 No. 22, 1930 No. 10, 1931 No. 45, 1934	73
	Commonwealth Shipping Act 1923	No. 3, 1923	11
	Northern Territory Railway Extension Act 1923	No. 11, 1923	7
	Seat of Government (Administration) Act 1924–1929	No. 8, 1924 No. 32, 1926 No. 44, 1928 No. 29, 1929	13
	Dairy Produce Export Control Act 1924-1934	No. 38, 1924 No. 45, 1934	13
	Dried Fruits Export Control Act 1924–1935	No. 40, 1924 No. 46, 1930 No. 45, 1934 No. 3, 1935	12
	Meat Industry Encouragement Act 1924	No. 55, 1924	9
	Peace Officers Act 1925 . ..	No. 12, 1925	2, 8
	Oodnadatta to Alice Springs Railway Act 1926	No. 3, 1926	8
	Northern Australia Act 1926 .	No. 16, 1926	14
	Science and Industry Research Act 1920-1926	No. 22, 1920 No. 20, 1926	14, 14A
	Development and Migration Act 1926-1930	No. 29, 1926 No. 11, 1930	15
	Canned Fruits Export Control Act 1926-1935	No. 40, 1926 No. 47, 1930 No. 9, 1933 No. 45, 1934 No. 4, 1935	12

(*a*) *See* footnote (*c*), *supra* p. xi
(*b*) *See* footnote (*b*), *supra* p. xxxii
(*c*) *See* footnote (*c*), *supra* p. xxiii
(*d*) *See* footnote (*b*), *supra* p. xxxii

TABLE OF COMMONWEALTH LEGISLATION FROM 1901 TO 1935, ETC.—*continued.*

Section of Constitution	Commonwealth Act — Short Title	Reference	Sections of Act.
Section 67	**Appointment of Officers** *continued*		
	Pearl shell Overseas Marketing Act 1927	No. 13, 1927	12
	Fresh fruits Overseas Marketing Act 1927	No 22, 1927	13
	Officers' Rights Declaration Act 1928 1933	No 16, 1928 No 19, 1933	
	Commonwealth Conciliation and Arbitration Act 1904 1934	(*a*)	18C, 34, 50A, 51
	Wine Overseas Marketing Act 1929 1934	No 6, 1929 No 48, 1930 No 45, 1934	13[illegible]
	Economic Research Act 1929	No 9, 1929	5, 9
	Forestry Bureau Act 1930 1932	No 16, 1930 No 27, 1932	8 [illegible]
	Trade Commissioners Act 1933	No 74, 1933	10
	Northern Australia Survey Act 1934	No. 61, 1934	11
	Meat Export Control Act 1935	No 52, 1935	15
	THE JUDICATURE		
71	**Federal Courts, &c.**		
	Judiciary Act 1903 1934	(*b*)	4
	Commonwealth Conciliation and Arbitration Act 1904 1934	(*a*)	11, 12
	Bankruptcy Act 1924 1933	(*c*)	18A
	Seat of Government Supreme Court Act 1933 1935	No 34, 1933 No 27, 1935	
72	**Appointment and Remuneration of Justices.**		
	Judiciary Act 1903 1934	(*b*)	5, 9, 47, 48A
	Commonwealth Conciliation and Arbitration Act 1904 1934	(*a*)	14, 14B
	Chief Justice's Pension Act 1918	No 38, 1918	
	Bankruptcy Act 1924 1933	(*c*)	18C, 18D
73	**Appellate Jurisdiction of High Court.**		
	Judiciary Act 1903 1934	(*b*)	34-37, 39, 72-77
	Commonwealth Conciliation and Arbitration Act 1904 1934	(*a*)	21AA
	Copyright Act 1905	No 25, 1905	73 (2)
	Designs Act 1906 1934	No. 4, 1906 No 14, 1912 No 53, 1932 No 70, 1932 No 36, 1933 No 12, 1934 No 45, 1934	39 (3)
	Land Tax Assessment Act 1910 1934	(*d*)	44M (10)
	Copyright Act 1912 1935	No 20, 1912 No 68, 1933 No 17, 1935	37 (2)
	Estate Duty Assessment Act 1914 1928	(*e*)	28
	Income Tax Assessment Act 1922 1934	(*f*)	51A (10), 51B, 62 (3C) (3G)
	War-time Profits Tax Assessment Act 1917 1918	No 33, 1917 No. 40, 1918	29 (5)
	Bankruptcy Act 1924 1933	(*c*)	26
	Seat of Government Supreme Court Act 1933 1935	No. 34, 1933 No 27, 1935	51, 52

(*a*) *See* footnote (*a*), *supra*, p. xxix
(*b*) *See* footnote (*a*), *supra* p xxxi
(*c*) *See* footnote (*a*), *supra* p xxv
(*d*) *See* footnote (*b*), *supra* p xlii
(*e*) *See* footnote (*c*), *supra* p xlii
(*f*) *See* footnote (*d*), *supra* p xlii

TABLE OF COMMONWEALTH LEGISLATION FROM 1901 TO 1935, ETC.—*continued*.

Section of Constitution	Commonwealth Act		
	Short Title	Reference	Sections of Act
Section 76	**Conferring Original Jurisdiction on High Court.**		
(i)	**In matters arising under the Constitution or involving its interpretation**		
	Judiciary Act 1903 1934	(a)	23, 30, 30A, 88
Section 76 (ii)	**In matters arising under laws made by the Parliament.**		
	Customs Act 1901 1935	(b)	221, 227, 245
	Excise Act 1901 1934	No 9, 1901 No 26, 1918 No 8, 1923 No 44, 1934	109, 115, 134
	Post and Telegraph Act 1901 1934	(c)	29, 43
	Property for Public Purposes Acquisition Act 1901	No 13, 1901	12, 17, 22, 25, 26, 38, 41, 43, 52, 55 (b), 58
	Commonwealth Electoral Act 1902 1911	(d)	193, 206A
	Judiciary Act 1903 1934	(a)	
	Defence Act 1903 1934	(e)	91 (b)
	Patents Act 1903 1935	(f)	47, 58, 67, 75–77, 84, 85A–87A, 111
	Commonwealth Conciliation and Arbitration Act 1904 1934	(g)	21AA, 31
	Trade Marks Act 1905 1934	(h)	8, 9, 16, 24, 27, 28, 30, 34, 35, 44, 45, 59, 71–73, 93
	Australian Industries Preservation Act 1906 1930	(i)	10, 11, 13, 19, 21, 22, 26
	Referendum (Constitution Alteration) Act 1906 1928	(j)	27, 29, 31
	Lands Acquisition Act 1906 1934	No 13, 1906 No 12, 1916 No 5, 1932 No 45, 1934	10, 11, 24, 36–39, 45, 46, 50, 54, 56, 59
	Land Tax Assessment Act 1910 1934	(k)	44K–44M, 48
	Lands Acquisition Act 1912	No 39, 1912	
	Navigation Act 1912 1935	(l)	383, 385
	Trading with the Enemy Act 1914–1921	No 9, 1914 No 17, 1914 No 20, 1916 No 23, 1921	8, 9C–9D, 9H, 9M, 9P, 9S
	Estate Duty Assessment Act 1914–1928	No 22, 1914 No 29, 1916 No 34, 1922 No 47, 1928	24–27 39–41

(a) *See* footnote (a), *supra* p xxxi
(b) *See* footnote (c), *supra* p x
(c) *See* footnote (a), *supra* p xxii
(d) *See* footnote (a), *supra* p viii
(e) *See* footnote (k), *supra* p xxii
(f) *See* footnote (c), *supra* p xxv
(g) *See* footnote (a), *supra* p xxix
(h) *See* footnote (d), *supra* p xxv
(i) *See* footnote (d), *supra* p x
(j) *See* footnote (a), *supra* p xxii
(k) *See* footnote (b), *supra* p viii
(l) *See* footnote (c), *supra* p vi

TABLE OF COMMONWEALTH LEGISLATION FROM 1901 TO 1935, ETC.—*continued.*

Section of Constitution.	Commonwealth Act		
	Short Title	Reference	Sections of Act
Section 76 (II.)	**In matters arising under laws made by the Parliament**—*continued*		
	River Murray Waters Act 1915 1934	No. 46, 1915 No. 20, 1923 No. 11, 1934	11
	Income Tax Assessment Act 1922 1934	(*a*)	50–51B, 53, 62 (3C) (3G), 74
	Patents Act (Partial Suspension) Act 1916	No 13, 1916	
	War-time Profits Tax Assessment Act 1917–1918	No 33, 1917 No 40, 1918	28, 29, 31
	Commonwealth Electoral Act 1918 1934	(*b*)	183, 203
	Industrial Peace Acts 1920	No. 21, 1920 No 55, 1920	27, 28
	Superannuation Act 1922 1934	No 33, 1922 No 45, 1924 No 22, 1930 No 10, 1931 No 45, 1934	41, 78
	Bankruptcy Act 1924 1933	(*c*)	20 (3)
	Sales Tax Assessment Act (No 1) 1930 1935	No 25, 1930 No 62, 1930 No 25, 1931 No. 30, 1932 No 61, 1932 No 17, 1933 No 17, 1933 No 16, 1934 No 29, 1934 No 8, 1935 No 45, 1935	42 (6), 54
(III.)	**In matters of Admiralty and Maritime Jurisdiction.**		
	Judiciary Act 1903 1934	(*d*)	30, 30A
Section 77 (I.)	**Jurisdiction of Federal Courts other than High Court.**		
	Commonwealth Conciliation and Arbitration Act 1904 1934	(*e*)	
	Bankruptcy Act 1924–1933 .	(*c*)	
	Seat of Government Supreme Court Act 1933–1935	No 34, 1933 No 27, 1935	
(II.)	**Excluding Jurisdiction of State Courts.**		
	Judiciary Act 1903 1934	(*d*)	38, 38A, 39, 57, 59
(III.)	**Investing State Courts with Federal Jurisdiction.**		
	Customs Act 1901–1935	(*f*)	221, 227, 245
	Excise Act 1901–1923	No 9, 1901 No. 20, 1918 No 8, 1923	109, 115, 134
	Post and Telegraph Act 1901 1934 ..	(*g*)	29, 43
	Property for Public Purposes Acquisition Act 1901	No 13, 1901	59

(*a*) *See* footnote (*d*), *supra* p xlii
(*b*) *See* footnote (*b*), *supra* p vii
(*c*) *See* footnote (*a*), *supra* p xxv
(*d*) *See* footnote (*a*), *supra* p xxxi
(*e*) *See* footnote (*a*) *supra* p xxix
(*f*) *See* footnote (*c*), *supra* p. x.
(*g*) *See* footnote (*a*), *supra* p. xxii.

TABLE OF COMMONWEALTH LEGISLATION FROM 1901 TO 1935, ETC.—*continued.*

Section of Constitution.	Commonwealth Act		
	Short Title	Reference	Sections of Act.
Section 77 (iii.)	**Investing State Courts with Federal Jurisdiction** —*continued.*		
	Punishment of Offences Act 1901	No 14, 1901	
	Commonwealth Electoral Act 1902–1911	(*a*)	193
	Claims against the Commonwealth Act 1902	No 21, 1902	
	Judiciary Act 1903–1934	(*b*)	17, 39 (2), 68
	Defence Act 1903–1931	(*c*)	91
	Patents Act 1903–1935	(*d*)	30, 47, 58, 67, 75, 77, 84, 85A, 86, 86A, 87, 87A, 111
	Commonwealth Conciliation and Arbitration Act 1904–1934	(*e*)	44, 46, 89
	Trade Marks Act 1905–1934	(*f*)	31, 35, 44, 45, 59, 71, 72, 95
	Copyright Act 1905	No 20, 1905	60, 73 (1)
	Designs Act 1906–1934	No 4, 1906 No 14, 1912 No 53, 1932 No 70, 1932 No. 36, 1933 No 42, 1934 No 15, 1934	25, 39 (1)
	Lands Acquisition Act 1906–1934	No 16, 1906 No 12, 1916 No 5, 1932 No 45, 1934	10, 11, 24, 36–39, 45, 46, 50, 54, 56
	Land Tax Assessment Act 1910–1934	(*g*)	44K, 44M
	Copyright Act 1912–1935 ..	No 20, 1912 No 68, 1933	16, 20, 37(1)
	Navigation Act 1912–1935	(*h*)	91, 92, 318, 320, 328, 380–383, 385, 395
	Estate Duty Assessment Act 1914–1928	No 22, 1914 No. 29, 1916 No. 34, 1922 No. 47, 1928	24, 39–41
	Income Tax Assessment Act 1922–1934	(*i*)	50, 51A, 51B, 62 (*c*) (*a*), 74
	Patents Act (Partial Suspension) Act 1916	No. 13, 1916	
	War-time Profits Tax Assessment Act 1917–1918	No. 33, 1917 No. 40, 1918	28, 29
	Commonwealth Electoral Act 1918–1934	(*j*)	58, 184

(*a*) *See* footnote (*a*), *supra* p. viii
(*b*) *See* footnote (*a*), *supra* p. xxxi.
(*c*) *See* footnote (*k*), *supra* p. xxii.
(*d*) *See* footnote (*c*), *supra* p. xxv.
(*e*) *See* footnote (*a*), *supra* p. xxix.
(*f*) *See* footnote (*d*), *supra* p. xxv.
(*g*) *See* footnote (*b*), *supra* p. xiii.
(*h*) *See* footnote (*c*), *supra* p. xi
(*i*) *See* footnote (*d*), *supra* p. xiii
(*j*) *See* footnote (*b*), *supra* p. vii

TABLE OF COMMONWEALTH LEGISLATION FROM 1901 TO 1935, ETC.—*continued.*

Section of Constitution	Commonwealth Act		
	Short Title	Reference	Sections of Act.
Section 77 (iii.)	**Investing State Courts with Federal Jurisdiction** —*continued.*		
	Bankruptcy Act 1924 1933	(*a*)	18, 19, 20
	Sales Tax Assessment Act (No. 1) 1930 1935	No 25, 1930 No. 62, 1930 No. 25, 1931 No. 39, 1932 No 64, 1932 No. 17, 1933 No. 47, 1933 No 16, 1934 No. 29, 1934 No 8, 1935 No 45, 1935	54
Section 78	**Conferring Rights to Proceed against Commonwealth or State.**		
	Claims against the Commonwealth Act 1902	No 21, 1902	
	Judiciary Act 1903 1934	(*b*)	56–67
	Arbitration (Public Service) Act 1911	No. 11, 1911	
	Arbitration (Public Service) Act 1920–1934	No. 28, 1920 No 1, 1928 No. 25, 1929	
79	**Number of Judges to exercise Federal Jurisdiction**		
	Judiciary Act 1903 1934	(*b*)	15 23, 89
80	**Place of Trial on Indictment.**		
	Judiciary Act 1903-1934	(*b*)	70
	FINANCE AND TRADE.		
81	**Appropriation of Moneys.**		
	Appropriation and Supply Acts		
	Audit Act 1901 1934	(*c*)	36–37, 62A
	Surplus Revenue Act 1908 ..	No. 15, 1908	5
	Trust Fund Advances Act 1910 .	No 2, 1910	
	Trust Fund Advances Act 1910 (No. 2)	No. 15, 1910	
	Belgian Grant Act 1914 . .	No 8, 1914	
	Funding Arrangements Act 1921 ..	No. 15, 1921	3
	Loans Redemption and Conversion Act 1921	No. 18, 1921	5
	Financial Agreement Act 1928 ..	No. 5, 1928	
83	**Payment of Moneys.**		
	Audit Act 1901-1934 .	(*c*)	31–37, 62A
84	**Transferred Officers.**		
	Commonwealth Public Service Act 1902-1918	(*d*)	60–62
	Commonwealth Public Service Act 1922-1934	(*e*)	4, 45, 48
	Northern Territory Acceptance Act 1910-1919	No. 20, 1910 No. 24, 1919	11*, 12*
	Northern Australia Act 1926	No. 16, 1926	39 (3)
	Transferred Officers' Pensions Act 1934	No. 34, 1934	

(*a*) *See* footnote (*a*), *supra* p xxv.
(*b*) *See* footnote (*a*), *supra* p xxxi.
(*c*) *See* footnote (*a*), *supra* p xx
(*d*) *See* footnote (*b*), *supra* p. xxx
(*e*) *See* footnote (*b*), *supra* p. xxxii

* This section has been repealed.

TABLE OF COMMONWEALTH LEGISLATION FROM 1901 TO 1935, ETC.—*continued.*

Section of Constitution	Commonwealth Act — Short Title	Reference	Sections of Act
Section 85	**Transferred Property.**		
	Property for Public Purposes Acquisition Act 1901	No 13, 1901	47, 60
	Lands Acquisition Act 1906–1916	No. 13, 1906 No 12, 1916	64
	Lands Acquisition Act 1912	No. 30, 1912	
	Naval Properties Transfer Act 1925	No 19, 1925	
	Financial Agreement Act 1928	No. 5, 1928	
	Financial Agreement Validation Act 1929	No 4, 1929	
87	**Braddon Clause.**		
	Surplus Revenue Act 1910	No 8, 1910	
	States Grants Act 1927–1934	No 4, 1927 No 45, 1934	
	Financial Agreement Act 1928	No 5, 1928	
	Financial Agreement Validation Act 1929	No 4, 1929	
88	**Imposition of Uniform Duties of Customs.**		
	Customs Tariff 1902	No 14, 1902	
92	**Inter-State Trade.**		
	Customs Act 1901–1935	(*a*)	272*
	Customs (Inter-State Accounts) Act 1910	No 9, 1910	
	†Inter-State Commission Act 1912	No 33, 1912	
	Navigation Act 1912–1935	(*b*)	
	Colonial Light Dues Collection Act 1932–1934	No 65, 1932 No. 15, 1934	
	Colonial Light Dues (Rates) Act 1932	No 66, 1932	
	Colonial Light Dues Appropriation Act 1932	No 67, 1932	
93	**Crediting of Revenue and Debiting of Expenditure.**		
	Customs Act 1901–1935	(*a*)	273*
	Surplus Revenue Act 1908	No. 15, 1908	
	Surplus Revenue Act 1909	No 18, 1909	
	Surplus Revenue Act 1910	No. 8, 1910	
	Customs (Inter-State Accounts) Act 1910	No 9, 1910	
94	**Distribution of Surplus Revenue.**		
	Surplus Revenue Act 1908	No 15, 1908	
	Surplus Revenue Act 1909	No. 18, 1909	
	Surplus Revenue Act 1910	No. 8, 1910	
	States Grants Act 1927–1934	No. 4, 1927 No 45, 1934	
95‡	**Western Australian Special Tariff.**		
	Customs Act 1901–1935	(*a*)	169*
	Excise Act 1901–1923	No 9, 1901 No. 26, 1918 No 8, 1923	80*

(*a*) *See* footnote (*c*), *supra* p x
(*b*) *See* footnote (*c*), *supra* p xi
* This section has been repealed
† *See* footnote †, *infra* p xliv
‡ The following Acts were passed by the Parliament of Western Australia in pursuance of the powers conferred by section 95 :—

Title	Year and Number.
An Act to impose certain Customs Duties subject to the provisions of the Commonwealth of Australia Constitution Act	64 Vic. No 14
An Act to impose certain Customs Duties in accordance with the provisions of the Commonwealth of Australia Constitution Act	1 Edw. VII. No. 3

TABLE OF COMMONWEALTH LEGISLATION FROM 1901 TO 1935, ETC. - *continued.*

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Section 96	**Financial Assistance to States**		
	Surplus Revenue Act 1910	No 8, 1910	5
	Tasmania Grant Act 1912	No 13, 1912	
	Tasmania Grant Act 1913	No 22, 1913	
	Tasmania Grant Act 1922	No 12, 1922	
	Main Roads Development Act 1923–1925	No 2, 1923 No 5, 1924 No 17, 1925	
	Tasmania Grant Act 1923	No 13, 1923	
	Tasmania Grant Act 1924	No 27, 1924	
	Federal Aid Roads Act 1926	No 46, 1926	
	Western Australia Grant Act 1926	No 10, 1926	
	States Grants Act 1927 1934	No 4, 1927 No 15, 1934	
	States' Grants Act 1935	No 46 1935	
	Financial Agreement Act 1928	No 1928	
	Tasmania Grant Act 1928	No 32 1928	
	Tasmania Sinking Fund Agreement Act 1928	No 44, 1928	
	Financial Agreement Validation Act 1929	No 4, 1929	
	Tasmania Grant Act 1929	No 23, 1929	
	Tasmania Grant Act 1932	No 18 1932	
	South Australia Grant Act 1929	No 26, 1929	
	Western Australia Agreement (Bulong Gold Mines) Act 1930	No 14, 1930	
	South Australia Grant Act 1930	No 57, 1930	
	South Australia Grant Act 1931	No 10, 1931	
	South Australia Grant Act 1932	No 36, 1932	
	Western Australia Grant Act 1931	No 20, 1931	
	Western Australia Grant Act 1932	No 37, 1932	
	Federal Aid Roads Act 1931	No 22, 1931	
	Loan (Unemployment Relief Works) Acts 1932	No 9, 1932 No 23, 1932	
	Commonwealth Grants Commission Act 1933	No 3, 1933	
	Fruit Growers Relief Act 1933	No 39 1933	
	Wheat Growers Relief Act 1933 1934	No 42, 1933 No 10, 1934	
	South Australia Grant Act 1933	No 70, 1933	
	Tasmania Grant Act 1933	No 72 1933	
	Western Australia Grant Act 1933	No 71, 1933	
	Mandarin Growers Relief Act 1934	No 27, 1934	
	South Australia Grant Act 1934	No 35, 1934	
	Western Australia Grant Act 1934	No 36, 1934	
	Tasmania Grant Act 1934	No 37, 1934	
	States Grants Act 1934	No 38, 1934	
	Wheat Growers Relief Act (No 2) 1934	No 59, 1934	
	Wheat Growers Relief Act 1934 1935	No 59, 1934 No 11, 1935 No 55, 1935	
	South Australia Grant Act 1935	No 42 1935	
	Western Australia Grant Act 1935	No. 43, 1935	
	Tasmania Grant Act 1935	No 44, 1935	
	Primary Producers Act 1935	No. 47, 1935	
	Tasmania Grant (Flour Tax) Act 1935	No 73, 1935	

TABLE OF COMMONWEALTH LEGISLATION FROM 1901 TO 1935, ETC.—*continued.*

Section of Constitution	Commonwealth Act		
	Short Title	Reference	Sections of Act
Section 97	**Audit.**		
	Audit Act 1901-1934	(*a*)	
98	**Navigation and Shipping.**		
	Sea-Carriage of Goods Act 1904	No. 14, 1904	
	**Seamen's Compensation Act* 1909	No. 29, 1909	
	Seamen's Compensation Act 1911	No. 13, 1911	
	Lighthouses Act 1911-1919	No. 14, 1911 No. 17, 1915 No. 6, 1919	
	†Inter-State Commission Act 1912	No. 33, 1912	
	Navigation Act 1912-1935	(*b*)	
	River Murray Waters Act 1915-1934	No. 46, 1915 No. 20, 1923 No. 11, 1934	
	Sea-Carriage of Goods Act 1924	No. 22, 1924	
	Colonial Light Dues Collection Act 1932-1934	No. 65, 1932 No. 15, 1934	
	Colonial Light Dues (Rates) Act 1932	No. 66, 1932	
	Colonial Light Dues Appropriation Act 1932	No. 67, 1932	
100	**Use of Waters.**		
	River Murray Waters Act 1915-1934	No. 46, 1915 No. 20, 1923 No. 11, 1934	
101	**Inter-State Commission.**		
	†Inter-State Commission Act 1912	No. 33, 1912	
102	**State Railway Preferences**		
	†Inter-State Commission Act 1912	No. 33, 1912	
103	**Appointment and Remuneration of Commissioners.**		
	Inter State Commission Act 1912	No. 33, 1912	4–15
104	**Railway Rates Necessary for Development.**		
	Inter State Commission Act 1912	No. 33, 1912	20
105	**Taking over State Debts.**		
	Constitution Alteration (State Debts) 1909	No. 3, 1910	
	Constitution Alteration (State Debts) 1928	No. 1, 1929	
105A	**Agreement with respect to State Debts.**		
	Constitution Alteration (State Debts) 1928	No. 1, 1929	
	Debt Conversion Agreement Act 1931	No. 14, 1931	
	Debt Conversion Agreement Act (No. 2) 1931	No. 52, 1931	
	Commonwealth Debt Conversion Act 1931	No. 18, 1931	
	Commonwealth Debt Conversion Act (No. 2) 1931	No. 1, 1932	
	Financial Agreements (Commonwealth Liability) Act 1932	No. 2, 1932	

(*a*) *See* footnote (*a*), *supra* p. xx (*b*) *See* footnote (*c*), *supra* p. xi

* The *Seamen's Compensation Act* 1909 was declared by the High Court to be invalid *See Owners of the s.s Kalina* v. *Wilson*, 11 C.L.R. 689, 17 A.L.R. 419 The Act has since been repealed by the *Seamen's Compensation Act* 1911

† Part V. (ss. 23–44) of the *Inter-State Commission Act* 1912 was declared by the High Court to be invalid. *The Commonwealth* v *The State of New South Wales*, 20 C.L.R. 54; 21 A.L.R. 128.

TABLE OF COMMONWEALTH LEGISLATION FROM 1901 TO 1935, ETC.—*continued.*

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Section 105A	**Agreement with respect to State Debts** —*continued.*		
	**Financial Agreements Enforcement Acts* 1932	No. 3, 1932 No. 7, 1932 No. 8, 1932 No. 10, 1932 No. 11, 1932	
	Financial Emergency (State Legislation) Act 1932	No. 13, 1932	
	Emergency Legislation Suspension Act 1932		
	THE STATES		
118	**Recognition of State Laws, &c.**		
	State and Territorial Laws and Records Recognition Act 1901-1928	No. 5, 1901 No. 15, 1928	
119	**Protection of States from Invasion and Violence.**		
	Defence Act 1903-1934	(*a*)	51
	TERRITORIES		
122	**Government of Territories.**		
	Service and Execution of Process Act 1901-1934	(*b*)	
	Defence Act 1903-1934	(*a*)	49
	Judiciary Act 1903-1934	(*c*)	11, 40B, 34A, 86 (*g*)
	Patents Act 1903-1935	(*d*)	4A, 4B
	Wireless Telegraphy Act 1905-1919	No. 8, 1905 No. 33, 1915 No. 4, 1919	2
	Papua Act 1905-1934	No. 9, 1905 No. 32, 1920 No. 25, 1924 No. 45, 1934	
	Trade Marks Act 1905-1934	(*e*)	9A, 9B
	Designs Act 1906-1934	No. 4, 1906 No. 14, 1912 No. 53, 1932 No. 70, 1932 No. 36, 1933 No. 12, 1934 No. 45, 1934	4A
	Seat of Government Acceptance Act 1909	No. 23, 1909	
	Northern Territory Acceptance Act 1910-1919	No. 20, 1910 No. 24, 1919	
	Seat of Government (Administration) Act 1910-1933	No. 25, 1910 No. 2, 1930 No. 9, 1931 No. 4, 1933	

(*a*) *See* footnote (*h*), *supra* p xxii
(*b*) *See* footnote (*a*), *supra* p viii
(*c*) *See* footnote (*a*) *supra* p xxxi
(*d*) *See* footnote (*c*) *supra* p xxv.
(*e*) *See* footnote (*d*) *supra* p xxv

* As to the validity of the *Financial Agreements Enforcement Act* 1932 (No 3 of 1932), *see* decisions of the High Court in *State of New South Wales* v *Commonwealth and others*, 46 C L R 155 and 246; 38 A L R 245

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	Northern Territory (Administration) Act 1910 1933	No 27, 1910 No 19, 1926 No 5, 1931 No 7, 1931 No 18, 1933	
	Pine Creek to Catherine River Railway Survey Act 1912	No 9, 1912	
	Pine Creek to Katherine River Railway Act 1913	No 21, 1913	
	Norfolk Island Act 1913 1935	No 15, 1913 No 14, 1935	
	Jervis Bay Territory Acceptance Act 1915	No 19, 1915	
	Income Tax Assessment Act 1922 1934	(*a*)	4, 5, 5A, 14 (1) (*bf*), (*n*)
	Nauru Island Agreement Act 1919	No 8, 1919	
	Nauru Island Agreement Act 1932	No 54, 1932	
	New Guinea Act 1920 1935	No 25, 1920 No 15, 1926 No 51, 1932 No 63, 1935	
	Treaty of Peace (Germany) Act 1919 1920	No 20, 1919 No 39, 1920	
	Treaties of Peace (Austria and Bulgaria) Act 1920	No 40, 1920	
	Treaty of Peace (Hungary) Act 1921	No 20, 1921	
	Air Navigation Act 1920	No 50, 1920	
	Northern Territory Representation Act 1922 1925	No 18, 1922 No 21, 1925	
	Northern Territory Railway Extension Act 1923	No 11, 1923	
	Removal of Prisoners (Territories) Act 1923	No 14, 1923	
	Seat of Government (Administration) Act 1924 1929	No 8, 1924 No 32, 1926 No 44, 1928 No 20, 1929	
	Northern Australia Act 1926	No 16 1926	
	Papua and New Guinea Bounties Act 1926	No 7, 1926	
	Oodnadatta to Alice Springs Railway Act 1926	No 3, 1926	
	Railways (South Australia) Agreement Act 1926	No 2, 1926	
	Seat of Government Railway Act 1928	No 40 1928	
	State and Territorial Laws and Records Recognition Act 1901 1928	No 5, 1901 No. 15, 1928	
	Seat of Government Acceptance Act 1929	No 10, 1929	22
	Seat of Government (Administration) Act 1930 1935	No 2, 1930 No 67, 1934 No 39, 1935	
	Commonwealth Employees' Compensation Act 1930	No. 24, 1930	
	Seat of Government Supreme Court Act 1933 1935	No 34, 1933 No 27, 1935	
	Ashmore and Cartier Islands Acceptance Act 1933	No. 60, 1933	
	Australian Antarctic Territory Acceptance Act 1933	No 8, 1933	
	Northern Australia Survey Act 1934	No 61, 1934	

(*a*) *See* footnote (*a*), *supra* p xiii

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	Seat of Government Act 1904	No	7, 1904	
	Commonwealth Conciliation and Arbitration Act 1904 1934	(*b*)		52
	Seat of Government Act 1908	No	24, 1908	
	Seat of Government Acceptance Act 1909	No	23, 1909	
	Seat of Government Acceptance Act 1922	No	28, 1922	
	Seat of Government (Administration) Act 1910 1933	*No*	*25, 1910*	
		No	2, 1930	
		No	9, 1931	
		No	4, 1934	
	Seat of Government (Administration) Act 1924 1929	No	8, 1924	
		No	32, 1926	
		No	44, 1928	
		No	29 1929	
	Seat of Government Acceptance Act 1929	No	10 1929	
	Seat of Government (Administration) Act 1930 1935	No	2 1930	
		No	67, 1934	
		No	39 1935	
128	**Alteration of Constitution**			
	Referendum (Constitution Alteration) Act 1906 1928	(*c*)		
	Referendum (Constitution Alteration) Act (No 2) 1911	No	31 1913	
	Constitution Alteration (Senate Elections) 1906	No	1, 1907	
	Constitution Alteration (State Debts) 1909	No	3, 1910	
	Constitution Alteration (State Debts) 1928	No	1, 1929	
	Compulsory Voting Act 1915	No	36, 1915	

(*a*) *See* footnote (*a*) *supra* p xxxi (*b*) *See* footnote (*a*), *supra* p xxix.
(*c*) *See* footnote (*e*) *supra* p xxii

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NOTE.—References in the second column to sections 51 52 75 76 and 77 (*simpliciter*) are to the words of the section preceding the first placitum cases upon the various placita contained in those sections being indicated by the citation of the particular placita numbers involved The letters "Sup" in the second column indicate the supplementary notes of cases appearing on pages 107–113, inclusive

TABLE OF ABBREVIATIONS ETC.

Abbreviation	Explanation	Pages (of Law Reports) to which Cases have been noted in footnotes to the Constitution
A.B.C.	Australian Bankruptcy Cases	8 A B C 240
A.C.	Appeal Cases, England	[1936] A C 360
A.L.R.	Argus Law Reports	42 A L R 366
A.L.T.	Australian Law Times	49 A L T (to end)
C.A.R.	Commonwealth Arbitration Reports	32 C A R (to end)
C.L.R.	Commonwealth Law Reports	55 C L R 125
Q.W.N.	Queensland Weekly Notes	1936 Q W N 33
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V.L.R. ..	Victorian Law Reports	1936 V L.R. 252
W.A.L.R.	Western Australian Law Reports	37 W.A.L.R. (to end)

In addition to cases from the foregoing Reports, a few cases have been taken from the Queensland Justice of the Peace Reports (Q.J.P.R.), the Weekly Notes, New South Wales (W.N., N.S.W.); the Workers Compensation Reports, New South Wales (W.C.R., N.S.W.), and the Australian Tax Decisions (A.T.D.)

THE COMMONWEALTH OF AUSTRALIA CONSTITUTION ACT[(a)]*

(As altered to 1st July, 1936).

(63 & 64 VICT. CHAPTER 12.)

An Act to constitute the Commonwealth of Australia.

[9th July, 1900]

WHEREAS[(a)] the people of New South Wales, Victoria, South Australia, Queensland, and Tasmania, humbly relying on the blessing of Almighty God, have agreed[(1)] to unite in one indissoluble Federal Commonwealth under the Crown of the United Kingdom of Great Britain and Ireland, and under the Constitution hereby established:

And whereas it is expedient to provide for the admission into the Commonwealth of other Australasian Colonies and possessions of the Queen:

Be it therefore enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:-

Short title

1 This Act may be cited as the *Commonwealth of Australia* Constitution Act.

Act to extend to the Queen's successors

2. The provisions of this Act referring to the Queen shall extend to Her Majesty's heirs and successors in the sovereignty of the United Kingdom.

GENERAL NOTES (1) The people of the Colonies in question agreed, on the dates respectively set out hereunder, to unite in one indissoluble Federal Commonwealth The voting in each Colony was as follows:-

Colony	Date of Poll	Number of Votes	
		In favour	Against
New South Wales	20th June, 1899	107,420	82,741
Victoria	27th July, 1899	152,653	9,805
South Australia	29th April, 1899	65,990	17,053
Queensland	2nd September, 1899	38,488	30,996
Tasmania	27th July, 1899	13,437	791

The vote in the case of the Colony of Western Australia was taken subsequently to the date of assent to the Commonwealth of Australia Constitution Act, viz., on 31st July, 1900, the voting being as follows:-In favour, 44,800, Against, 19,691

NOTES OF CASES -(a) Preamble recited as emphasizing the axiom that the Crown is ubiquitous and indivisible in the King's Dominions. *Amalgamated Society of Engineers* v *Adelaide Steamship Co. Ltd.* (1920), 28 C.L.R. 129, at p. 152, 20 A.L.R. 337, at p. 341

* NOTE.- For notes of certain cases dealing generally with the interpretation of the Constitution, see Supplementary Notes of Cases, infra, pp. 107-113

Proclamation of Commonwealth

3. It shall be lawful for the Queen, with the advice of the Privy Council, to declare by proclamation that, on and after a day therein appointed, not being later than one year after the passing of this Act, the people of New South Wales, Victoria, South Australia, Queensland, and Tasmania, and also, if Her Majesty is satisfied that the people of Western Australia have agreed thereto, of Western Australia, shall be united in a Federal Commonwealth under the name of the Commonwealth of Australia[1] But the Queen may, at any time after the proclamation, appoint a Governor-General for the Commonwealth[2].

GENERAL NOTES (1) By Proclamation dated 17th September, 1900, Her Majesty Queen Victoria, with the advice of the Privy Council, declared that on and after 1st January, 1901, the people of New South Wales, Victoria, South Australia, Queensland, Tasmania and Western Australia should be united in a Federal Commonwealth under the name of the Commonwealth of Australia (For copy of the Proclamation see Commonwealth Statutory Rules 1901 27, Vol IV, p 3621, Commonwealth Gazette, 1901 No 1, p 1)

(2) The first Governor General, the Earl of Hopetoun (afterwards the Marquis of Linlithgow), was appointed on 29th October, 1900 and arrived in Sydney on 15th December, 1900 He took the necessary oaths at Centennial Park Sydney on 1st January 1901

Commencement of Act.

4. The Commonwealth shall be established, and the Constitution of the Commonwealth shall take effect, on and after the day so appointed[1] But the Parliaments of the several colonies may at any time after the passing of this Act make any such laws, to come into operation on the day so appointed, as they might have made if the Constitution had taken effect at the passing of this Act.

GENERAL NOTES (1) The day so appointed was 1st January, 1901 See Note (1) to Covering Cls 1st 3 *supra*

Operation of the Constitution and laws.

5 This Act, and all laws made by the Parliament of the Commonwealth under the Constitution[a], shall be binding on the courts, judges, and people of every State[b] and of every part of the Commonwealth, notwithstanding anything in the laws of any State; and the laws of the Commonwealth[c] shall be in force on all British ships[d], the Queen's ships of war excepted, whose first port of clearance[e] and whose port of destination[e] are in the Commonwealth[f].

NOTES OF CASES (a) As to the obligation imposed on Courts by this section to consider whether laws made by the Parliament are made under it, ie, in pursuance of the Constitution, see *Kingston v Gold* (1901) 27 V L R 417 at pp 426 428 430 7 A L R 75 at pp 268 269 23 A L T 152, at pp 157 158

As to the obligation imposed by this section on Courts to declare Statutes, which are inconsistent with the Constitution invalid see *Baxter v Commissioners of Taxation* N S W, (1907) 4 C L R 1087, at p 1125, 13 A L R 81, at p 328

(b) As to the obligation imposed by this section upon State Courts to administer laws of the State the Constitution and laws passed by the Parliament of the Commonwealth see *Baxter v Commissioners of Taxation*, N S W, (1907) 4 C L R 1087 at p 1136, 13 A L R 313, at p 332

As to the obligation imposed by this section upon State Courts to determine the rights of litigants with a due regard to laws of the Commonwealth notwithstanding any State law, see *Colonial Sugar Refining Co Ltd v Irving* 1904 S R Qd 18 at pp 27–8

As to the power of the Parliament of the Commonwealth to pass laws binding on States or Executive Governments of States see *R v Sutton* (1908) 5 C L R 789 at p 807 14 A L R 505, at p 512 See also Supplementary Notes of Cases particularly pp 109 110

As to the supremacy, by virtue of this section, of a Commonwealth law supported by the Constitution over a State law with which it is inconsistent, see *Attorney-General for Queensland v Attorney-General for the Commonwealth* (1915) 20 C L R 148 at p 172, 21 A L R 221, at pp 227 8

As to the supremacy of Commonwealth legislation within its own plane over State legislation within its own plane see *Attorney-General for N S W v Brewery Employees Union of N S W* (1908) 6 C L R 469, at p 582, 14 A L R 565, at p 603, *Duncan v State of Queensland*, (1916) 22 C L R 556, at p. 587, 22 A L R 465 at p 478, *Federated Municipal and Shire Council Employees Union of Australia v. Melbourne Corporation*, (1910) 10 C L R 508 at pp 525, 531 549, 25 A L R 309, at pp. 315, 318, 321

Section cited in support of invalidity of *Wines, Beer and Spirit Sales Act* 1880 (W A), which required a higher fee for a licence for the sale of wine manufactured from fruit grown in any other State than for the sale of wine manufactured from fruit grown in the State of Western Australia *Fox v Robbins*, (1908) 8 C L R 115, at p 127 15 A L R 112, at p 115

As to the effect of this section in binding the Crown in right of a State so far as any law, validly made under s. 51, purported to affect the Crown in that right, see *Amalgamated Society of Engineers* v. *Adelaide Steamship Co. Ltd.*, (1920) 28 C.L.R. 129 at pp. 153, 166, 174; 26 A.L.R. 337 at pp. 344, 349, 352; *Australian Railways Union* v. *Victorian Railways Commissioners*, (1930) 44 C.L.R. 319, at p. 389; 37 A.L.R. 37, at p. 59.

As to the paramountcy under this section of a title conferred under Commonwealth law over one conferred under State law see *Commonwealth* v. *New South Wales* (1923) 33 C.L.R. 1 at p. 27; 29 A.L.R. 401 at p. 408; *Clyde Engineering Co. Ltd.* v. *Cowburn*; *Metters Ltd.* and *Lever Bros. Ltd.* v. *Poland*, (1926) 37 C.L.R. 466, at pp. 488, 497; 32 A.L.R. 214 at pp. 222, 225; *R.* v. *Turner*, *ex parte Marine Board of Hobart*; *Tasmania* v. *Commonwealth* (1927) 39 C.L.R. 411 at p. 444; 33 A.L.R. 171 at p. 18[illegible].

As to the Constitution and laws made by the Parliament being binding on the States and the Courts of the States see *Commonwealth* v. [illegible] (1924) 3[illegible] C.L.R. 60 at p. 118; 31 A.L.R. 153 at p. 169. (Special leave to appeal from the decision of the High Court in the case of *Commonwealth* v. *Kelman* [illegible] by Privy Council: *Kelman* v. *Commonwealth* ([illegible]) 32 A.L.R. 1.)

As to the laws of the Commonwealth being binding on the people of a State and affecting the King's prerogative in relation to a State see *Griffin* v. *South Australia* (1924) 35 C.L.R. 200 at p. 205; 31 A.L.R. 81, at p. 83.

As to the binding force of laws of the Commonwealth throughout the Commonwealth subject to any prohibition or qualification in the Constitution itself or in any controlling Imperial law see *ex parte Walsh and Johnson*; *in re Yates*, (1925) 37 C.L.R. 36 at p. 81; 32 A.L.R. [illegible] at p. [illegible].

As to the binding force of laws of the Commonwealth notwithstanding State Constitutions see *Le Mesurier* v. *Connor* (1929) 42 C.L.R. 481 at p. 513; 35 A.L.R. [illegible] [illegible] A.R.C. [illegible]7 at p. [illegible].)

As to the obligation on the Chief Justice of the Supreme Court of a State to execute the judgment of the High Court on appeal from the Supreme Court see *Lowe* v. *Blake* (1908) [illegible] C.L.R. 19[illegible] at p. [illegible]; 14 A.L.R. 103 at p. 105.

Question whether in view of this clause the Commonwealth Court of Conciliation and Arbitration has jurisdiction to make an award inconsistent with a State law considered by High Court: *Federated Saw Mill &c. Employees of Australasia* v. *James Moore & Son Pty. Ltd.* (1909) 8 C.L.R. 465; 15 A.L.R. [illegible]; *Australian Boot Trade Employees Federation* v. *Whybrow & Co.* (1910) 10 C.L.R. 266 at pp. 312, [illegible] 328, 332, 340; 16 A.L.R. 18[illegible] at pp. [illegible]. [illegible] overruled by the *Engineers Case*; see [illegible] (1920) 34 C.L.R. 482 at p. [illegible]48; 30 A.L.R. 402 at p. 430. See [illegible] (b) (v) [illegible] pages 30-7 *infra*.

Question whether by reason of the fact that State Courts have already by virtue of this section jurisdiction in many matters of federal jurisdiction [illegible] High Court [illegible] original jurisdiction [illegible] conferred upon a State Court [illegible] High Court: [illegible] (19[illegible]) [illegible] C.L.R. [illegible]; [illegible] A.L.R. [illegible] at p. 2[illegible].

([illegible]) As to whether the expression "laws of the Commonwealth" includes laws of a Territory see *R.* v. *Bernasconi* (1915) 19 C.L.R. [illegible]; [illegible] A.L.R. [illegible].

As to the meaning of the phrase "the laws of the Commonwealth" in this section see *The Commonwealth* v. *Colonial Combing, Spinning and Weaving Co. Ltd.* (19[illegible]) [illegible] C.L.R. [illegible] at pp. [illegible], 440; 29 A.L.R. 1[illegible]8 at pp. 140, 14[illegible].

(*d*) Held by the Supreme Court of New South Wales [illegible] (O'Connor [illegible] JJ. [illegible]) [illegible] that the [illegible] in this section of the [illegible] British [illegible] that the laws of the Commonwealth [illegible] (1902) 2 S.R. (N.S.W.) 1[illegible].

Held also that this [illegible] to the laws of the Commonwealth [illegible].

As to the meaning of "British ship", [illegible] *Merchant Service Guild of Australasia* v. *Commonwealth Steamship Owners' Association* (1913) 16 C.L.R. [illegible]; [illegible] A.L.R. [illegible].

(*e*) Held by the Commonwealth Court of Conciliation and Arbitration that the words "port of destination" mean port of final destination [illegible] of the voyage, and that the words are intended to describe a continuous voyage, "first port of clearance" being the beginning and "port of destination" the end. Held therefore that when a ship sails on a round voyage having as its commencement and its termination a port within the Commonwealth, the *Commonwealth Conciliation and Arbitration Act* 1904 is in force from beginning to end of the voyage, no matter to what part of the world the voyage has extended: *Merchant Service Guild of Australasia* v. *Commonwealth Steamship Owners Association* (1908) 1 C.A.R. [illegible].

Held by the High Court that the words "ships whose first port of clearance and whose port of destination are in the Commonwealth" do not apply to ships owned by a Victorian company, which are registered in Melbourne and are engaged in trade between [illegible] and the neighbouring ports and Australia, sometimes going to South Africa: *Merchant Service Guild of Australasia* v. *Archibald Currie & Co. Proprietary Ltd.* (1908) [illegible] C.L.R. [illegible]; 14 A.L.R. [illegible].

Held by the High Court (Isaacs, Higgins, Gavan Duffy and Rich JJ.; Barton, Acting C.J. dissenting) that, by virtue of this section a single and indivisible industrial dispute is none the less an industrial dispute extending beyond the limits of any one State within the meaning of s. 51 (XXXV.) of the Constitution merely because some of the operations in respect of which the dispute exists are performed beyond the territorial limits of the Commonwealth: *Merchant Service Guild of Australasia* v. *Commonwealth Steamship Owners Association* (1913) 16 C.L.R. 664; [illegible] A.L.R. [illegible].

Held by the High Court (Isaacs and Higgins JJ. and [illegible] Gavan Duffy and Rich JJ.) that the words "first port of clearance" and "port of destination" in this section indicate the beginning and the end of an actual voyage which is in fact intended at the beginning of the voyage and the ship's papers are not conclusive as to what the voyage is. Held by Barton Acting C.J. that the "port of destination" intended by the section is the port for which the ship is bound as stated in her entry outwards, shipping bill and content or manifest: *Merchant Service Guild of Australasia* v. *Commonwealth Steamship Owners' Association* (1913) 16 C.L.R. 6[illegible]; [illegible] A.L.R. 4[illegible]0.

Held by the High Court that a ship registered outside the Commonwealth and engaged in regular trading between Sydney and San Francisco, Sydney being her "home port", is not a ship whose first port of clearance and whose port of destination are in the Commonwealth: *Clarke* v. *Union Steamship Co. of New Zealand Ltd.* (1914) 18 C.L.R. 142; 20 A.L.R. 221.

Held by the High Court (Knox C.J., Isaacs, Rich and Starke JJ.; Higgins and Gavan Duffy, JJ., dissenting) that apart from this section the jurisdiction conferred by s. [illegible] (XXXV.) of the Constitution extends only to disputes as to the terms and conditions of industrial operations carried on within the territorial limits of the Commonwealth, and therefore that the Commonwealth Court of Conciliation and Arbitration has no jurisdiction with regard to a dispute between parties in Australia

as to the terms of contracts to be entered into in Australia for employment beyond the territorial limits of Australia upon British ships whose ports of clearance and final ports of destination are not in the Commonwealth *Merchant Service Guild of Australasia* v *Commonwealth Steamship Owners' Association* (No 3), (1920) 28 C L R 495 27 A L R 218

(*f*) As to whether this section extends the ambit of the jurisdiction of the Commonwealth Parliament with respect to navigation and shipping, see *Australian Steamships Limited* v. *Malcolm*, (1914) 19 C.L.R. 298 at pp 64 311 324 330 21 A L R 37 at pp 58 41 46, 48

As to effect of this clause in preventing s 51 (xxix) External affairs being read as empowering Extra territorial Legislation in respect of all the subject matters in s 51, see judgment of High Court in *R* v *Burgess* *Ex parte Henry* (delivered 10th November 1936)

Definitions

6. "The Commonwealth" shall mean the Commonwealth of Australia as established under this Act.

"The States" shall mean such of the colonies of New South Wales, New Zealand, Queensland, Tasmania, Victoria, Western Australia, and South Australia, including the northern territory of South Australia, as for the time being are parts of the Commonwealth, and such colonies or territories as may be admitted into or established by the Commonwealth as States[1], and each of such parts of the Commonwealth shall be called "a State"

"Original States" shall mean such States as are parts of the Commonwealth at its establishment[2]

GENERAL NOTES (1) No [illegible] at the date of the preparation of this volume been admitted into or established by the Commonwealth as States

(2) Original States New South Wales Victoria South Australia Queensland Tasmania and Western Australia

Repeal of Federal Council Act 48 & 49 Vict c 60

7 The Federal Council of Australasia Act, 1885, is hereby repealed, but so as not to affect any laws passed by the Federal Council of Australasia and in force at the establishment of the Commonwealth[1].

Any such law may be repealed as to any State by the Parliament of the Commonwealth, or as to any colony not being a State by the Parliament thereof[2]

GENERAL NOTES (1) In section 5 of the Act repealing the Federal Council of Australasia and in force at the establishment of the Commonwealth it was provided that "Laws" as contained in the Australasian Federal Law Volumes published by the Government Printer Hobart Tasmania with the authority of the Parliament Printer Melbourne Victoria The laws are also contained in the publication [illegible] of the Federal Council of Australasia

As to the effect of the establishment of the Commonwealth on all of the colonies referred to in covering Clause 6 of the Constitution Original States there remains no colony not being a State to which the second paragraph of this section can apply

The Federal Council Act 1885 and all of the Laws passed by the Federal Council of Australasia which were in force at the date of the preparation of this volume are contained in Appendix A, *infra* pp 1[illegible]

In the following Table the short titles of laws not in force at the date of the preparation of this volume are printed in italics The title column of the Table on the next page shows how these laws have been affected by Commonwealth legislation

Consecutive Number of Act for purposes of this Table *	Regnal Year and Number of Act	Short Title
1	49 Victoria No 1	The Federal Council Jurisdiction Act 1886
2	49 Victoria No 2	The Federal Council Evidence Act 1886
3	49 Victoria No 3	*The Australasian Civil Process Act* 1886
4	49 Victoria No 4	*The Australasian Judgments Act* 1886
5	51 Victoria No 1	The Queensland Pearl Shell and Beche de mer Fisheries (Extra-territorial) Act of 1888
6	52 Victoria No 1	The Western Australian Pearl Shell and Beche-de-mer Fisheries (Extra-territorial) Act of 1889
7	54 Victoria No 1	The Australian Orders in Lunacy Act 1891
8	56 Victoria No 1	*The Federal Garrisons Act* 1893
9	60 Victoria No 1	*The Australasian Naturalisation Act* 1897
10	60 Victoria No 2	*The Australasian Testamentary Process Act* 1897

Table indicating other publications containing copies of the laws passed by the Federal Council of Australasia with particulars as to how the laws have been affected by Commonwealth legislation

Act No.*	Victorian Statutes, 1890 Vol VII Pages	*Victoria Government Gazette* Year and Pages	Queensland Statutes Vol III Pages	*Queensland Government Gazette* Year and Pages	Tasmanian Statutes Vol IV Pages	*Hobart Gazette* Year and Pages	How affected by Commonwealth legislation
1	1009 12	1886 pp 396 7	3021 4	1886 pp 650–61	3011 4	1886 pp 34 8	
2	1000 1	1886 p 397	3024 5	1886 pp 663 4	3014 5	1886 II 349 50	
3	997 1000	1886 pp 397 8		1886 pp 665 8	3015 8	1886 II 1 1 4	
4	1012 5	1886 pp 398 9		1886 pp 669 71	3018 20	1886 II 9.5 8	Repealed by Act No 11 1901 s 2
5	1001 5	1888 p 578 9	3022 3	1888 pp 1–8 40	3021 4	1888 pp 1101 5	Repealed by Act No 11 1901 s 2
6	1005 9	1890 p 332 4	3029 3	1890 pp 308 70	3025 9	1890 pp 499 11	
7	1015 6	1891 pp 903 4	463 3	1891 [illegible]	3028 9	1891 pp 341 2	
8		1893 pp 1131 2		1893 pp 921 –	3029 31	1893 II 439–41	Repealed by Act No 20 1903 s 6
9		1897 p 1152	3631	1897 p 811	0 1	1897 pp 361 –	Superseded by Act No 11 1903
10		1897 p 1193		1897 p 81	30 [illegible]	1897 II 363	Repealed by Act No 11 1901 s 2

* NOTE The numbers contained in the first column of each of the foregoing tables are not in any way official numbers but have merely been assigned to the laws for the purposes of this volume

8. After the passing of this Act the Colonial Boundaries Act, 1895,(1) shall not apply to any colony which becomes a State of the Commonwealth, but the Commonwealth shall be taken to be a self governing colony for the purposes of that Act

Application of Colonial Boundaries Act 58 & 59 Vict c 34

GENERAL NOTES (1) Following is a copy of the Colonial Boundaries Act 1895

58 & 59 VICT CHAPTER 34

AN ACT TO PROVIDE IN CERTAIN CASES FOR THE ALTERATION OF THE BOUNDARIES OF COLONIES

(6th July 1895)

Be it enacted by the Queen's Most Excellent Majesty by and with the advice and consent of the Lords Spiritual and Temporal and Commons in this present Parliament assembled and by the authority of the same as follows

1.—(1) Where the boundaries of a colony have either before or after the passing of this Act been altered by Her Majesty the Queen by Order in Council or by patent the boundaries as so altered shall be and be deemed to have been from the date of the alteration the boundaries of the colony

Alteration of boundaries of colony

(2) Provided that the consent of a self governing colony shall be required for the alteration of the boundaries thereof

(3) In this Act "self governing colony" means any of the colonies specified in the schedule to this Act

2 This Act may be cited as the Colonial Boundaries Act 1895

Short title

SCHEDULE

SELF GOVERNING COLONIES

Canada
Newfoundland
New South Wales
Victoria
South Australia
Queensland
Western Australia
Tasmania
New Zealand
Cape of Good Hope
Natal

Constitution.

9. The Constitution of the Commonwealth shall be as follows :—

THE CONSTITUTION.

This Constitution is divided as follows :—

Chapter I.—The Parliament :
Part I.—General :
Part II.—The Senate :
Part III.—The House of Representatives :
Part IV.—Both Houses of the Parliament :
Part V.—Powers of the Parliament :
Chapter II.—The Executive Government :
Chapter III.—The Judicature :
Chapter IV.—Finance and Trade :
Chapter V.—The States :
Chapter VI.—New States :
Chapter VII.—Miscellaneous :
Chapter VIII.—Alteration of the Constitution.
The Schedule.

CHAPTER I. THE PARLIAMENT.

PART I. GENERAL.

CHAPTER I.—THE PARLIAMENT.

PART I.—GENERAL.

Legislative power.

1. The legislative power[a] of the Commonwealth shall be vested in a Federal Parliament,[b] which shall consist of the Queen, a Senate, and a House of Representatives, and which is hereinafter called "The Parliament," or "The Parliament of the Commonwealth."

NOTES OF CASES (a) Question whether s 52 (g) of the *Customs Act* 1901—which gives the Governor-General in Council power by proclamation to prohibit the importation of goods specified by him—is a contravention of this section as being a delegation of legislative power, discussed by High Court. *Baxter* v *Ah Way*, (1909) 8 C L R 626 at p 631 15 A L R 603, at p 605 See also Supplementary Notes, *infra*, p 113

(b) As to the power of the Parliament—
(i) to confer upon the Governor-General wide powers to make regulations, and
(ii) to declare that such regulations shall have the force of law notwithstanding anything in any other Act

see *Victorian Stevedoring and General Contracting Co. Pty Ltd and Meakes* v. *Dignan*, (1931), 46 C L R 73, 38 A L R 22

Section 13 of the *Dried Fruits Export Control Act* 1924 1935 (Commonwealth) provides as follows :— "For the purpose of enabling the Board effectively to control the export and the sale and distribution after export of Australian dried fruits, the Governor-General may by proclamation prohibit the export from the Commonwealth of any dried fruits except in accordance with a licence issued by the Minister subject to such conditions and restrictions as are prescribed after recommendation to the Minister by the Board" Held by the High Court that that section contains no improper delegation of the legislative powers of the Commonwealth *Crowe* v. *Commonwealth*, (1935) 54 C.L.R. 69; 41 A L.R 445 See also Supplementary Notes *infra*, p. 113

Governor-General

2. A Governor-General[1][a] appointed by the Queen shall be Her Majesty's representative in the Commonwealth, and shall have and may exercise in the Commonwealth during the Queen's pleasure, but subject to this Constitution, such powers and functions of the Queen as Her Majesty may be pleased to assign to him.

GENERAL NOTES.—(1) The following is a list of the Governors-General and persons appointed to administer the Government of the Commonwealth since the establishment of the Commonwealth:—

Governors-General and Persons appointed to administer the Government *	Term of Office	
	From	To
Rt Hon John Adrian Louis, Earl of Hopetoun, P C, K T, G C M G, G C V O (afterwards the Most Hon the Marquis of Linlithgow)	1st January 1901	9th January 1903†
Rt Hon Hallam Baron Tennyson, P C, G C M G (Acting Governor-General)	17th July, 1902	9th January 1903
Rt Hon Hallam Baron Tennyson P C, G C M G	9th January 1903	21st January 1904
Rt Hon Henry Stafford Baron Northcote P C, G C M G, G C I L, C B	21st January 1904	9th September 1908
Rt Hon William Humble, Earl of Dudley P C, G C B, G C M G, G C V O	9th September 1908	31st July 1911‡
Rt Hon Frederic John Napier Baron Chelmsford K C M G (Administrator of the Government of the Commonwealth)	21st December 1909	4th January 1910
Rt Hon Thomas Baron Denman P C, G C M G, K C V O	31st July 1911	18th May 1914
Rt Hon Sir Ronald Craufurd Munro Ferguson P C, G C M G (afterwards Viscount Novar)	18th May 1914	6th October 1920
Rt Hon Henry William Baron Forster P C, G C M G	6th October 1920	8th October 1925
Rt Hon John Lawrence Baron Stonehaven P C, G C M G, D S O	8th October 1925	4th January 1931§
Lt Col the Rt Hon Arthur Herbert Tennyson Baron Somers, K C M G, D S O, M C (Administering the Government of the Commonwealth)	3rd October 1930	1st January 1931
Rt Hon Sir Isaac Alfred Isaacs P C, G C M G	2nd January 1931	23rd January 1936
Major General the Rt Hon Alexander Gore Arkwright Hore-Ruthven, V C, C M G, C B, D S O	23rd January 1936	

* In the foregoing list the Persons named held office as Governors-General except where otherwise indicated after their name.

† Left Australia 16th July 1902.

‡ Absent from Australia from 31st October 1909 to 27th January 1910.

§ Left Australia 2nd October 1930.

‖ Still in office at the date of the preparation of this volume.

NOTES OF CASES.—(a) As to the validity of provisions of regulations made under the *War Precautions Act 1914-1918* empowering the Governor-General to authorize the exercise of functions conferred on courts of law, see *Berger v. Turner* (1920), 28 C.L.R. 388 at p. 391.

As to the powers and functions conferred upon, and the position of, the Governor-General under this section, see *Commonwealth v. Colonial Combing, Spinning and Weaving Co. Ltd.* (1922), 31 C.L.R. 421, at pp. 437, 453; 29 A.L.R. 138 at pp. 144, 148.

Salary of Governor-General

3. There shall be payable to the Queen out of the Consolidated Revenue fund of the Commonwealth, for the salary of the Governor-General, an annual sum which, until the Parliament otherwise provides,(1) shall be ten thousand pounds.

The salary of a Governor-General shall not be altered during his continuance in office.(2)

GENERAL NOTES.—(1) The Parliament had not up to the date of preparation of this volume otherwise provided.

During the undermentioned three financial years however an allowance was made to the Governor General for residence at Canberra:—

Financial Year	Amount of Allowance
	£
1928-29	2,000
1929-30	1,000
1930-31	500

(2) Although under this section the Parliament has no power to alter the salary of a Governor-General during his continuance in office the Governor-General during the undermentioned financial years voluntarily accepted a reduction of salary to the following reduced amounts in lieu of the sum of Ten thousand pounds:—

Financial Year	Reduced amount voluntarily accepted by Governor-General
	£
1931-32	8,900
1932-33	8,900
1933-34	8,900
1934-35	9,650

Provisions relating to Governor-General

4. The provisions of this Constitution relating to the Governor-General extend and apply to the Governor-General[1] for the time being, or such person[1] as the Queen may appoint to administer the Government of the Commonwealth; but no such person shall be entitled to receive any salary from the Commonwealth in respect of any other office during his administration of the Government of the Commonwealth.

GENERAL NOTES (1) For list of Governors-General and Persons appointed up to the date of the preparation of this volume to administer the Government of the Commonwealth see General Note (2) to s. 2 *supra*.

Sessions of Parliament
Prorogation and Dissolution.

5. The Governor-General may appoint such times for holding the sessions of the Parliament[1] as he thinks fit, and may also from time to time, by Proclamation or otherwise, prorogue the Parliament, and may in like manner dissolve the House of Representatives.[1]

Summoning Parliament

After any general election the Parliament shall be summoned to meet not later than thirty days after the day appointed for the return of the writs.

First session

The Parliament shall be summoned to meet not later than six months after the establishment of the Commonwealth.

GENERAL NOTE (1) The following are

(*a*) the dates of meeting of the Parliament

(*b*) the first and last dates of sittings for each session of the Parliament and

(*c*) the dates of dissolution (or expiration of the House of Representatives or in the case of a double dissolution of both Houses of the Parliament

Number of Parliament	Date of meeting of Parliament	First and last dates of sittings in each session			Date of Dissolution (or expiration) of House of Representatives or in case of double dissolution of both Houses *
		Session	From	To	
First	9th May 1901	First	9th May 1901	10th Oct 1902	23rd Nov 1903
		Second	20th May 1903	2nd Oct 1903	
Second	2nd Mar 1904	First	23rd Mar 1904	15th Dec 1904	5th Nov 1906
		Second	25th June 1906	21st Dec 1906	
		Third	7th June 1906	12th Oct 1906	
Third	20th Feb 1907	First	20th Feb 1907	31st Jan 1907	19th Feb 1910
		Second	3rd July 1907	5th June 1908	
		Third	16th Sept 1908	17th Dec 1908	
		Fourth	26th May 1909	8th Dec 1909	
Fourth	1st July 1910	First	1st July 1910	25th Nov 1910	23rd Apr, 1913
		Second	5th Sept 1911	21st Dec 1911	
		Third	13th June 1912	21st Dec 1912	
Fifth	9th July, 1914	First	9th July 1914	19th Dec 1913	30th July 1914
		Second	15th Apr 1914	20th June 1914	
Sixth	8th Oct 1914	First	8th Oct 1914	17th Mar 1917	26th Mar 1917
Seventh	14th June 1917	First	14th June 1917	14th June 1917	2nd Nov 1919
		Second	11th July 1917	21st Oct 1919	
Eighth	26th Feb 1920	First	26th Feb 1920	10th Dec 1921	6th Nov 1922
		Second	20th June 1922	14th Oct 1922	
Ninth	28th Feb 1923	First	28th Feb 1923	19th Mar 1923	3rd Oct, 1925
		Second	15th June 1923	10th Oct 1924	
		Third	11th June 1925	25th Sept, 1926	
Tenth	13th Jan 1926	First	13th Jan 1926	22nd Sept 1928	9th Oct 1928
Eleventh	9th Feb 1929	First	9th Feb 1929	12th Sept 1929	16th Sept, 1929
Twelfth	20th Nov 1929	First	20th Nov 1929	26th Nov, 1931	27th Nov 1931
Thirteenth	17th Feb 1932	First	17th Feb 1932	22nd Aug 1934	7th Aug 1934
Fourteenth	23rd Oct 1934	First	23rd Oct 1934	†	

* NOTE.—In all cases except those of the Third and Fifth Parliaments the date in the last column of the foregoing table is that of the dissolution of the House of Representatives. In the case of the Third Parliament the date is that of the expiry of the House of Representatives. In the case of the Fifth Parliament the date is that of the double dissolution or dissolution of both Houses of the Parliament.

† First Session not completed at the date of the preparation of this volume.

6. There shall be a session of the Parliament once at least in every year,[1] so that twelve months shall not intervene between the last sitting of the Parliament in one session and its first sitting in the next session. Yearly session of Parliament.

GENERAL NOTES. (1) For details of sessions of the Parliament, see notes to s 5 *supra*

PART II -- THE SENATE.

PART II THE SENATE

The Senate

7. The Senate shall be composed of senators for each State, directly chosen by the people of the State, voting, until the Parliament otherwise provides,[1] as one electorate.[a]

But until the Parliament of the Commonwealth otherwise provides,[1] the Parliament of the State of Queensland, if that State be an Original State, may make laws dividing the State into divisions and determining the number of senators to be chosen for each division,[2] and in the absence of such provision the State shall be one electorate.

Until the Parliament otherwise provides[1] there shall be six senators for each Original State. The Parliament may make laws increasing or diminishing the number of senators for each State,[3] but so that equal representation of the several Original States shall be maintained and that no Original State shall have less than six senators.

The senators shall be chosen for a term of six years, and the names of the senators chosen for each State shall be certified by the Governor to the Governor-General.

GENERAL NOTES. (1) The Parliament had not, up to the date of the preparation of this volume otherwise provided

(2) The Parliament of the State of Queensland had not, up to the date of the preparation of this volume, made any law in pursuance of this power

(3) The Parliament had not, up to the date of the preparation of this volume, made any law in pursuance of this power

NOTES OF CASES. (a) As to the provision for Senators being directly chosen by the people of the State being a dominant provision, see *London v Ocallin*, (1907), 5 C L R 201, at pp 206, 207, 212, 215, 14 A L R 345 at pp 234, 236 7

As to the Senate representing the several States as entities and equally, as parties that have entered into the federal compact as equals, see *Bachaan v Commonwealth*, (1911) 10 C L R 315, at p 327, 19 A L R 251, at p 254

8. The qualification of electors of senators shall be in each State that which is prescribed by this Constitution, or by the Parliament,[1] as the qualification for electors of members of the House of Representatives; but in the choosing of senators each elector shall vote only once. Qualification of electors

GENERAL NOTES - (1) For qualifications of electors of Senators at the date of the preparation of this volume, see *Commonwealth Electoral Act* 1918 1934 s 39

9.[a] The Parliament of the Commonwealth may make laws prescribing the method of choosing senators,[b] but so that the method Method of election of senators.

shall be uniform for all the States. Subject to any such law, the Parliament of each State may make laws prescribing the method of choosing the senators for that State.[1]

Times and places

The Parliament of a State may make laws for determining the times and places of elections of senators for the State.[1] (c)

GENERAL NOTES (1) For list of State Acts passed in pursuance of this power, see Table of Commonwealth Legislation *supra* p. viii (footnote)

NOTES OF CASES (a) As to this section emphasizing that the doing of all things necessary for giving a State its representation in the Senate is entrusted to the State itself, see *R. v. Governor of State of South Australia* (1907) 4 C.L.R. 1497, at pp. 1507, 8; 14 A.L.R. 98 at p. 100. See also *Tardon v. O'Loghlin*, (1907) 5 C.L.R. 201 at pp. 209, 210; 14 A.L.R. 231 at pp. 235, 237.

(b) Held by the High Court that s. 128A (12) of the *Commonwealth Electoral Act* 1918-1925 which provides *inter alia* that every elector who fails to vote at an election without a valid and sufficient reason for such failure shall be guilty of an offence, is a valid exercise of the power conferred on the Commonwealth Parliament by this section "to make laws . . . prescribing the method of choosing senators." *Judd v. McKeon* (1926) 38 C.L.R. 380; 32 A.L.R. 380.

(c) Held by the High Court that s. 14 of the *Commonwealth Electoral (War time) Act* 1917 which provides that on the day appointed as polling day for an election of the Senate or a general election of the House of Representatives no referendum or vote of the electors of any State or part of a State shall be taken under the law of a State is not inconsistent with this section. *R. v. Brisbane Licensing Court; Ex parte Daniell* (1920) 28 C.L.R. 23 at p. 31; 26 A.L.R. 105 at p. 107.

Application of State laws

10 Until the Parliament otherwise provides,[1] but subject to this Constitution, the laws in force in each State, for the time being, relating to elections[a] for the more numerous House of the Parliament of the State shall, as nearly as practicable, apply to elections of senators for the State.[b]

GENERAL NOTES (1) The Parliament has otherwise provided by means of the Commonwealth Electoral Acts the first of which was passed in 1902.

NOTES OF CASES (a) Held by the High Court that a law requiring the signing of electoral articles in newspapers at the time of the election is a law relating to elections. *South v. Oldham* (1914) 17 C.L.R. 155; 18 A.L.R. 148.

(b) Held by the High Court that s. 11 of the *Commonwealth Electoral (War time) Act* 1917 which prohibits the holding under State law of a referendum or vote of the electors of any State or part of a State on the day appointed as polling day for an election of the Senate or a general election of the House of Representatives is a lawful exercise of the power conferred on the Parliament of the Commonwealth by this section coupled with ss. 51 (XXXVI.) and (XXXIX.). *R. v. Brisbane Licensing Court; Ex parte Daniell* (1920) 28 C.L.R. 23; 26 A.L.R. 105.

Failure to choose senators

11 The Senate may proceed to the despatch of business, notwithstanding the failure[1] of any State to provide for its representation in the Senate.[a]

GENERAL NOTES (1) No cases of failure of any State to provide for its representation in the Senate had arisen up to the date of the preparation of this volume.

NOTES OF CASES (a) Concluding phrase of this section cited by High Court as suggesting *prima facie* that the doing of all things necessary for giving a State its representation in the Senate is entrusted to the State itself. See *R. v. Governor of the State of South Australia* (1907) 4 C.L.R. 1497 at pp. 1507, 8; 14 A.L.R. 98 at p. 100.

Issue of writs

12. The Governor[a] of any State may cause writs to be issued for elections of senators for the State. In case of the dissolution of the Senate the writs shall be issued within ten days from the proclamation of such dissolution.

NOTES OF CASES (a) Held by the High Court that the Governor, in acting under this section, is acting in the capacity of the constitutional head of the State, and not as an officer of the Commonwealth

within the meaning of s. 75 (v) of the Constitution, and that therefore a mandamus will not lie to him to compel him to do an act in his capacity of Governor *R* v *Governor of the State of South Australia*, (1907) 4 C.L.R. 1497; 14 A.L.R. 98

As to ss. 7 and 9 and this section being ample in themselves to provide by direct election for the filling of places of senators retiring at the expiration of their term notwithstanding any failure to comply strictly with the second paragraph of s. 13, see *Vardon* v *O'Loghlin*, (1907) 5 C.L.R. 201 at p. 215; 14 A.L.R. 33, at p. 237.

As to writs being issued under the authority of this section whenever the necessity arises, see *Vardon* v *O'Loghlin*, (1907) 5 C.L.R. 201, at p. 209; 14 A.L.R. 293 at p. 235

13.[1] As soon as may be after the Senate first meets, and after each first meeting of the Senate following a dissolution thereof, the Senate shall divide the senators chosen for each State into two classes, as nearly equal in number as practicable; and the places of the senators of the first class shall become vacant at the expiration of *the third year* **three years**, and the places of those of the second class at the expiration of *the sixth year* **six years**, from the beginning of their term of service; and afterwards the places of senators shall become vacant at the expiration of six years from the beginning of their term of service. Rotation of senators. Altered by No. 1, 1907, s. 2.

The election to fill vacant places shall be made *in the year at the expiration of which* **within one year before** the places are to become vacant.

For the purposes of this section the term of service of a senator shall be taken to begin on the first day of *January* **July** following the day of his election,[a] except in the cases of the first election and of the election next after any dissolution of the Senate, when it shall be taken to begin on the first day of *January* **July** preceding the day of his election.

GENERAL NOTES (1) The words printed in italics in this section are those which were omitted by Act No. 1, 1907, and the words printed in black type are those which were inserted by that Act

NOTES OF CASES (a) Held by the High Court (prior to the alteration substituting "July" for "January") that this provision is not inconsistent with an election being held after the first day of January to fill vacancies which ought to have been filled at an election held before that day *R.* v *Governor of the State of South Australia* (1907) 4 C.L.R. 1497 at p. 1508; 14 A.L.R. 98 at p. 100

As to the object of this section being for the purpose of fixing the term of service of Senators elected in ordinary and regular rotation, see *Vardon* v *O'Loghlin* (1907) 5 C.L.R. 201 at pp. 210, 211, 214-5; 14 A.L.R. 233, at pp. 235-7

14. Whenever the number of senators for a State is increased or diminished,[1] the Parliament of the Commonwealth may make such provision for the vacating of the places of senators for the State as it deems necessary to maintain regularity in the rotation. Further provision for rotation

GENERAL NOTES – (1) The number of Senators for a State had not, up to the date of the preparation of this volume, been increased or diminished

15.[a] If the place of a senator becomes vacant before the expiration of his term of service, the Houses of Parliament of the State for which he was chosen shall, sitting and voting together, choose a person to hold Casual vacancies.

the place until the expiration of the term, or until the election of a successor as hereinafter provided, whichever first happens. But if the Houses of Parliament of the State are not in session at the time when the vacancy is notified, the Governor of the State, with the advice of the Executive Council thereof, may appoint a person to hold the place until the expiration of fourteen days after the beginning of the next session of the Parliament of the State, or until the election of a successor, whichever first happens.

At the next general election of members of the House of Representatives, or at the next election of senators for the State, whichever first happens, a successor shall, if the term has not then expired, be chosen to hold the place from the date of his election until the expiration of the term

The name of any senator so chosen or appointed shall be certified by the Governor of the State to the Governor General.

NOTES OF CASES (a) Held by the High Court that this section applies only in case of an abnormal ending of the term of service of a Senator *Loader v. O'Loghlin* (1907) 5 C.L.R. 201, at pp. 206, 208, 210, 16, 14 A.L.R. 253, at pp. 254, 8. See also *R. v. Governor of the State of South Australia*, (1907) 4 C.L.R. 1497, at pp. 1507, 1510; 14 A.L.R. 98, at pp. 100, 1.

Qualifications of senator

16. The qualifications of a senator shall be the same as those of a member of the House of Representatives.[1]

GENERAL NOTES (1) The qualifications of a member of the House of Representatives were originally those set out in s. 34 (*infra*) but have since been prescribed by the Parliament in the Commonwealth Electoral Acts. The qualifications in force at the date of the preparation of this volume are contained in the *Commonwealth Electoral Act* 1918-1929, s. 69.

Election of President.

17. The Senate shall, before proceeding to the despatch of any other business, choose a senator to be the President of the Senate; and as often as the office of President becomes vacant the Senate shall again choose a senator to be the President.

The President shall cease to hold his office if he ceases to be a senator. He may be removed from office by a vote of the Senate, or he may resign his office or his seat by writing addressed to the Governor-General.

Absence of President

18. Before or during any absence of the President, the Senate may choose a senator to perform his duties in his absence.

Resignation of senator.

19.[a] A senator may, by writing addressed to the President, or to the Governor-General if there is no President or if the President is

absent from the Commonwealth, resign his place, which thereupon shall become vacant.

NOTES OF CASES – (a) Discussion as to the possible effect of a resignation under this section after a petition had been lodged against the return of the person resigning and an appointment had been made under s. 15 as to a casual vacancy *Vardon* v *O'Loghlin*, (1907) 5 C L R 201, at p 208 ; 11 A L R 283, at p 236

20. The place of a senator shall become vacant if for two consecutive months of any session of the Parliament he, without the permission of the Senate, fails to attend the Senate. Vacancy by absence

21. Whenever a vacancy happens in the Senate,[a] the President, or if there is no President or if the President is absent from the Commonwealth the Governor-General, shall notify the same to the Governor of the State in the representation of which the vacancy has happened. Vacancy to be notified.

NOTES OF CASES (a) Held by the High Court that where the Court of Disputed Returns has declared an election void as to one of three Senators returned or elected a vacancy has arisen within the meaning of this section *R* v *Governor of the State of South Australia*, (1907) 4 C L R 1497, at p 1500, 11 A L R 98 at p 101

22. Until the Parliament otherwise provides,[1] the presence of at least one-third of the whole number of the senators shall be necessary to constitute a meeting of the Senate for the exercise of its powers Quorum

GENERAL NOTES (1) The Parliament had not up to the date of the preparation of this volume, otherwise provided

23. Questions arising in the Senate shall be determined by a majority of votes, and each senator shall have one vote. The President shall in all cases be entitled to a vote, and when the votes are equal the question shall pass in the negative. Voting in Senate

PART III.—THE HOUSE OF REPRESENTATIVES.

PART III HOUSE OF REPRESENTATIVES.

24. The House of Representatives shall be composed of members directly chosen by the people[a] of the Commonwealth, and the number of such members shall be, as nearly as practicable, twice the number of the senators. Constitution of House of Representatives

The number of members chosen in the several States shall be in proportion to the respective numbers of their people, and shall, until

the Parliament otherwise provides,[1] be determined, whenever necessary, in the following manner :—

(i.) A quota shall be ascertained by dividing the number of the people of the Commonwealth, as shown by the latest statistics of the Commonwealth, by twice the number of the senators :

(ii.) The number of members to be chosen in each [redacted] shall be determined by dividing the number of the people of the State, as shown by the latest statistics of the Commonwealth, by the quota ; and if on such division there is a remainder greater than one-half of the quota, one more member shall be chosen in the State.

But notwithstanding anything in this section, five members at least shall be chosen in each Original State.

GENERAL NOTES.- (1) The Parliament has otherwise provided, by means of the *Representation Act* 1905

For the first six years after the establishment of the Commonwealth the number of members chosen in each State was as set out in the proviso to s 26 (*infra*) Thereafter the following changes took place prior to the date of the preparation of this volume

Prior to the election held on 12th December, 1906, for the Third Parliament, Victoria lost a member and New South Wales gained a member

Prior to the election held on 31st May, 1913, for the Fifth Parliament, Victoria lost a member and Queensland gained a member

Prior to the election held on 16th December, 1922 for the Ninth Parliament, Victoria lost a member and New South Wales gained a member

Prior to the election held on 15th September 1934, for the Fourteenth Parliament, South Australia lost a member

The number of members chosen by the various States at the date of the preparation of this volume was therefore —

New South Wales	28
Victoria	20
Queensland	10
South Australia	6
Western Australia	5
Tasmania	5

In addition, the Northern Territory of Australia—a territory surrendered by South Australia and accepted by the Commonwealth under s 122 of the Constitution was in 1922 (by the *Northern Territory Representation Act* 1922) granted representation in the House of Representatives, the member for the Northern Territory having the right to speak, but not the right to vote

NOTES OF CASES (a) As to the fundamental nature of the direct choice of members of Parliament by the people see *Lindon v O'Loghlin*, (1907) 5 C L R 201, at p 212 3, 14 A L R 233, at p 236 See also *Buchanan v Commonwealth* (1913) 16 C L R 315 at p 327 8, 19 A L R 251, at p 254

Provision as to races disqualified from voting

25. For the purposes of the last section, if by the law of any State all persons of any race are disqualified from voting at elections for the more numerous House of the Parliament of the State, then, in reckoning the number of the people of the State or of the Commonwealth, persons of that race resident in that State shall not be counted.

Representatives in first Parliament.

26. Notwithstanding anything in section twenty-four, the number of members to be chosen in each State at the first election shall be as follows :—

New South Wales	twenty-three ;
Victoria	twenty ;
Queensland..	eight ;
South Australia	six ;
Tasmania	five ;

Provided that if Western Australia is an Original State,[1] the numbers shall be as follows :—

New South Wales	..	..	..	twenty-six ;
Victoria	..	..	..	twenty-three ;
Queensland	..	..	..	nine ,
South Australia	..	..	..	seven ,
Western Australia	..	..	..	five ;
Tasmania	..	..	..	five.

GENERAL NOTES—(1) Western Australia was an original State See General Notes to Preamble, *supra* p 1 General Note (2) to covering clause 3 *supra* p 2 and General Note (2) to covering clause 6 *supra* p 4

27. Subject to this Constitution, the Parliament may make laws for increasing or diminishing the number of the members of the House of Representatives.[1] **Alteration of number of members**

GENERAL NOTES (1) Up to the date of the preparation of this volume the Parliament had not made any Law for the purpose of increasing or diminishing the number of members The operation of the *Representation Act* 1905, enacted in pursuance of s 24 *supra* may however in certain circumstances, result in an increase or diminution of the number of members, as has in fact resulted See General Note (2) to s 24, *supra* p 14

28. Every House of Representatives[1] shall continue for three years from the first meeting of the House, and no longer, but may be sooner dissolved by the Governor-General **Duration of House of Representatives**

GENERAL NOTES —(1) For dates of meeting and dissolution or expiration of each House of Representatives see General Notes to s 5 *supra*, p 8

29. Until the Parliament of the Commonwealth otherwise provides,[1] the Parliament of any State may make laws for determining the divisions in each State for which members of the House of Representatives may be chosen, and the number of members to be chosen for each division.[2] A division shall not be formed out of parts of different States. **Electoral divisions**

In the absence of other provision, each State shall be one electorate.[3]

GENERAL NOTES (1) The Parliament of the Commonwealth has however provided, by means of the Commonwealth Electoral Acts For the provisions in force at the date of the preparation of this volume, see *Commonwealth Electoral Act* 1918 19 Geo V No 26

(2) For list of State Acts passed in pursuance of this power see Footnote to s 29 in the Table of Commonwealth Legislation, *supra*, p ix

(3) At the first Federal Election—that held in 1901—each of the States of South Australia and Tasmania was one electorate for the election of members of the House of Representatives

30. Until the Parliament otherwise provides,[1] the qualification of electors of members of the House of Representatives shall be in each State that which is prescribed by the law of the State as the qualification of electors of the more numerous House of Parliament of the State ; but in the choosing of members each elector shall vote only once. **Qualification of electors**

GENERAL NOTES—(1) The Parliament has otherwise provided, by means of the *Commonwealth Electoral Act* 1918-1934, s 39 (repealing an earlier provision made by the *Commonwealth Franchise Act* 1902)

Application of State laws

31. Until the Parliament otherwise provides,[1] but subject to this Constitution, the laws in force in each State for the time being relating to elections[a] for the more numerous House of the Parliament of the State shall, as nearly as practicable, apply to elections in the State of members of the House of Representatives.

GENERAL NOTES – (1) The Parliament has otherwise provided by means of the Commonwealth Electoral Acts For the present provision see *Commonwealth Electoral Act* 1918–1934

NOTES OF CASES (a) Held by the Supreme Court of Victoria that s 282 of the *Constitution Act Amendment Act* 1890 (Vic) which provides that no action suit or other proceeding whatsoever shall be brought or maintained whereby to charge any person upon any contract or agreement for the loan of money or the doing of any work or service or the supply of any goods for or towards or concerning or in carrying on or prosecuting any election of a member under this Act or any Act hereby repealed is part of the laws in force in Victoria relating to elections within the meaning of this section *Hennessey v Bultams* (1901) 27 V L R 374 7 A L R 211 23 A L J 92 Question of application of s 282 of the *Constitution Act Amendment Act* 1890 (Vic) to Commonwealth Elections discussed by High Court *Miller v Haweis* (1907) 5 C L R 89, 1 A L R 593

Held by the High Court that s 181AA of the *Commonwealth Electoral Act* 1902–1911 – which requires the signing of electoral articles in newspapers at the time of elections – is a law relating to elections, and within the powers of the Parliament of the Commonwealth *South v Oldham* (1924) 35 C L R 355 18 A L R 448

Writs for general election

32. The Governor General in Council may cause writs to be issued for general elections of members of the House of Representatives.

After the first general election, the writs shall be issued within ten days from the expiry of a House of Representatives or from the proclamation of a dissolution thereof

Writs for vacancies

33 Whenever a vacancy happens in the House of Representatives, the Speaker shall issue his writ for the election of a new member, or if there is no Speaker or if he is absent from the Commonwealth the Governor General in Council may issue the writ

Qualifications of members

34 Until the Parliament otherwise provides,[1] the qualifications of a member of the House of Representatives shall be as follows .—

(i.) He must be of the full age of twenty one years, and must be an elector entitled to vote at the election of members of the House of Representatives, or a person qualified to become such elector, and must have been for three years at the least a resident within the limits of the Commonwealth as existing at the time when he is chosen :

(ii.) He must be a subject of the Queen, either natural-born or for at least five years naturalized under a law of the United Kingdom, or of a Colony which has become or becomes a State, or of the Commonwealth, or of a State.

GENERAL NOTES – (1) The Parliament has otherwise provided by means of the *Commonwealth Franchise Act* 1902 and the Commonwealth Electoral Acts The qualifications in force at the date of the preparation of this volume are contained in the *Commonwealth Electoral Act* 1918–1934, s 69 The qualifications of the member representing the Northern Territory are set out in the *Northern Territory Representation Act* 1922–1925, s 4

35. The House of Representatives shall, before proceeding to the despatch of any other business, choose a member to be the Speaker of the House, and as often as the office of Speaker becomes vacant the House shall again choose a member to be the Speaker. Election of Speaker.

The Speaker shall cease to hold his office if he ceases to be a member. He may be removed from office by a vote of the House, or he may resign his office or his seat by writing addressed to the Governor-General.

36. Before or during any absence of the Speaker, the House of Representatives may choose a member to perform his duties in his absence. Absence of Speaker.

37. A member may by writing addressed to the Speaker, or to the Governor-General if there is no Speaker or if the Speaker is absent from the Commonwealth, resign his place, which thereupon shall become vacant. Resignation of member

38. The place of a member shall become vacant if for two consecutive months of any session of the Parliament he, without the permission of the House, fails to attend the House. Vacancy by absence.

39. Until the Parliament otherwise provides,[1] the presence of at least one-third of the whole number of the members of the House of Representatives shall be necessary to constitute a meeting of the House for the exercise of its powers. Quorum.

GENERAL NOTES (1) The Parliament has not, up to the date of the preparation of this volume, otherwise provided

40. Questions arising in the House of Representatives shall be determined by a majority of votes other than that of the Speaker. The Speaker shall not vote unless the numbers are equal, and then he shall have a casting vote. Voting in House of Representatives.

PART IV.—BOTH HOUSES OF THE PARLIAMENT.

PART IV. BOTH HOUSES OF THE PARLIAMENT.

41. No adult person who has or acquires a right to vote[a] at elections for the more numerous House of the Parliament of a State shall, Right of electors of States.

while the right continues,[b] be prevented by any law of the Commonwealth[c] from voting at elections for either House of the Parliament of the Commonwealth.[d]

NOTES OF CASES (a) As to the franchise being a right to vote see *Judd* v *McKeon*, (1926) 38 C L R 380 at p 385 32 A L R 389, at p 391

(b) Held by the High Court that an aboriginal native of Asia or the Islands of the Pacific who was naturalized within the meaning of the *Naturalization Act* 1903–1917, is under s 18 of the *Electoral Act* 1907 (W A), disqualified from voting at an election notwithstanding that he has, pursuant to s 17, been enrolled as an elector and therefore that he is not within the protection of this section *Muramats* v *Commonwealth Electoral Officer* (W A), (1923) 32 C L R 500, 40 A L R 81

(c) As to the meaning of "law of the Commonwealth" in this section see *R* v *Bernasconi* (1915) 19 C L R 629 at p 641 21 A L R 86 at p 88

(d) Objection that certain persons whose names were on the State roll, but not on the Commonwealth roll, were not allowed to vote, overruled by High Court *Cameron* v *Fysh* (1904) 1 C L R 314, at p 319

Oath or affirmation of allegiance

42. Every senator and every member of the House of Representatives shall before taking his seat make and subscribe before the Governor-General, or some person authorized by him, an oath or affirmation of allegiance in the form set forth in the schedule to this Constitution

Member of one House ineligible for other

43. A member of either House of the Parliament shall be incapable of being chosen or of sitting as a member of the other House

Disqualification.

44. Any person who

(i.) Is under any acknowledgment of allegiance, obedience, or adherence to a foreign power, or is a subject or a citizen or entitled to the rights or privileges of a subject or a citizen of a foreign power: or

(ii.) Is attainted of treason, or has been convicted and is under sentence, or subject to be sentenced, for any offence punishable under the law of the Commonwealth or of a State by imprisonment for one year or longer[a]: or

(iii.) Is an undischarged bankrupt or insolvent: or

(iv.) Holds any office of profit under the Crown, or any pension payable during the pleasure of the Crown out of any of the revenues of the Commonwealth: or

(v.) Has any direct or indirect pecuniary interest in any agreement with the Public Service of the Commonwealth otherwise than as a member and in common with the other members of an incorporated company consisting of more than twenty-five persons:

shall be incapable of being chosen or of sitting as a senator or a member of the House of Representatives.

But sub-section (iv.) does not apply to the office of any of the Queen's Ministers of State for the Commonwealth, or of any of the

Queen's Ministers for a State, or to the receipt of pay, half-pay, or a pension by any person as an officer or member of the Queen's navy or army, or to the receipt of pay as an officer or member of the naval or military forces of the Commonwealth by any person whose services are not wholly employed by the Commonwealth

NOTES OF CASES (a) As to the operation of this paragraph in cases where a candidate is found guilty of illegal practices punishable by imprisonment for more than one year, see *Chanter v Blackwood* (1904) 1 C L R 39, at pp 57 to 76 10 A L R (C N) 18 at pp 11 to 0

Vacancy on happening of disqualification.

45 If a senator or member of the House of Representatives

(i) Becomes subject to any of the disabilities mentioned in the last preceding section or

(ii) Takes the benefit whether by assignment, composition, or otherwise, of any law relating to bankrupt or insolvent debtors or

(iii) Directly or indirectly takes or agrees to take any fee or honorarium for services rendered to the Commonwealth, or for services rendered in the Parliament to any person or State

his place shall thereupon become vacant.

Penalty for sitting when disqualified.

46 Until the Parliament otherwise provides,[1] any person declared by this Constitution to be incapable of sitting as a senator or as a member of the House of Representatives shall, for every day on which he so sits, be liable to pay the sum of one hundred pounds to any person who sues for it in any court of competent jurisdiction

GENERAL NOTES (1) The Parliament had not otherwise provided up to the date of the preparation of this volume

Disputed elections

47 Until the Parliament otherwise provides,[1] any question respecting the qualification of a senator or of a member of the House of Representatives, or respecting a vacancy[a] in either House of the Parliament, and any question of a disputed election to either House, shall be determined by the House in which the question arises

GENERAL NOTES (1) The Parliament has otherwise provided by means of the Commonwealth Electoral Acts For the provision in force at the date of the preparation of this volume constituting the High Court of Australia the Court of Disputed Returns see *Commonwealth Electoral Act* 1918 1934, ss 181 202

NOTES OF CASES (a) Held by the High Court that until the Parliament should otherwise provide, the question whether a vacancy existed in the representation of a State in the Senate was a question to be decided by the Senate under this section *R v The Governor of the State of South Australia* (1907) 4 C L R 1497, 14 A L R 98

Allowance to members.

48. Until the Parliament otherwise provides.[1] each senator and each member of the House of Representatives shall receive an allowance of four hundred pounds a year, to be reckoned from the day on which he takes his seat

GENERAL NOTES (1) The Parliament has otherwise provided, as follows

Rate of Allowance

(i) By the *Parliamentary Allowances Act* 1907 assented to 28th August 1907 the allowance was increased to £600 a year except in the case of Ministers, the Presiding Officers of the two Houses and the Chairmen of Committees

(ii) By the *Parliamentary Allowances Act* 1920 assented to 22nd May 1920 the allowance was increased to £1 000 a year except in the case of Ministers, the Presiding Officers of the two Houses, and the Chairmen of Committees and to £800 in the case of the members holding those positions Provision was also made for an additional allowance of £200 a year to the Leader of the Opposition in the Senate and £400 a year to the Leader of the Opposition in the House of Representatives

(iii) By the *Financial Emergency Act* 1931 assented to 17th July 1931 the allowances of Senators and Members (including allowances in respect of any parliamentary office) were reduced by the following percentages

	Per cent
Allowances up to £1 000 per annum	20
Allowances exceeding £1 000 but not exceeding £2 000 per annum	22½
Allowances exceeding £2 000	25

(iv) By the *Financial Emergency Act* 1932, assented to 3rd October, 1932 the allowances of Senators and Members were reduced by the following percentages, in lieu of the reductions set out in note (iii) *supra*

	Per cent
Allowance of Senator or Member	20
Salary of President of Senate or Speaker of House of Representatives	30
Salary of a Chairman of Committees	27½
Allowance of Leader of Opposition in either House	25

(v) By the *Financial Relief Act* 1933 assented to 26th October, 1933 the allowances of Senators and Members were reduced by the following percentages, in lieu of the reductions set out in note (iv) *supra*

	Per cent
Allowances up to £1 000	17½
Allowances exceeding £1 000 but not exceeding £2 000	20
Allowances exceeding £2 000	22½
Allowances of Senators or Members who are Ministers of State	20

(vi) By the *Financial Relief Act* 1935 assented to 9th October 1935 each of the percentages set out in note (v) *supra* was reduced by 2½ per cent

Date from which allowance to be reckoned

By the *Parliamentary Allowances Act* 1902 detailed provisions were made as to the date from which the allowance should, in various cases be reckoned These provisions were superseded or amended in 1907 1920 and 1928 The provisions in force at the date of the preparation of this volume are contained in the *Parliamentary Allowances Act* 1920 as amended by the *Parliamentary Allowances Act* 1928

Privileges, &c., of Houses.

49.[1] [a] The powers, privileges, and immunities of the Senate and of the House of Representatives, and of the members and the committees of each House, shall be such as are declared by the Parliament, and until declared shall be those of the Commons House of Parliament of the United Kingdom, and of its members and committees, at the establishment of the Commonwealth.

GENERAL NOTES—(1) The only powers, privileges and immunities declared in pursuance of this section up to the date of the preparation of this volume were those declared by the *Parliamentary Papers Act* 1908, in relation to the authorization of the publication of parliamentary papers

NOTES OF CASES (a) As to the power of the Parliament to legislate as to the authority given to the Houses of Parliament under s 128 in relation to the alteration of the Constitution see judgment of Isaacs J (dissenting) in *Colonial Sugar Refining Co Ltd* v *Attorney General for the Commonwealth*, (1912) 15 C L R 182 at p 217 18 A L R 429 at p 442

Section applied by Dixon, J, for the purpose of ascertaining whether a regulation laid before the Senate by a private Senator had been laid before it in accordance with the manner in which documents are dealt with by the House of Commons *Dignan* v *Australian Steamships Pty Ltd*, (1931) 45 C L R. 188, at p. 203, 37 A L R 213, at p 217

50. Each House of the Parliament may make rules and orders with respect to— **Rules and orders.**

(i.) The mode in which its powers, privileges, and immunities may be exercised and upheld:

(ii.) The order and conduct of its business and proceedings either separately or jointly with the other House.

PART V. POWERS OF THE PARLIAMENT.

PART V. POWERS OF THE PARLIAMENT.

51.[a] The Parliament shall, subject to this Constitution,[b] have power to make laws for the peace, order, and good government[c] of the Commonwealth with respect to[d]:— **Legislative powers of the Parliament.**

NOTES OF CASES. (a) *Application of maxims in interpretation of Constitution.* As to the particular application to Constitutions of the maxims *expressum facit cessare tacitum* and *expressio unius est exclusio alterius* see *Federated Amalgamated Government Railway and Tramway Service Association* v. *New South Wales Railway Traffic Employees Association* (1906) 4 C L R 488 at p 534, 13 A L R 273 at p 279; *Australian Boot Trade Employees Federation* v. *Whybrow & Co* (1910) 10 C L R 266, at p 291, 16 A L R 185, at p 193.

Comparison with United States Constitution. Comparison between distribution of powers under Commonwealth and United States Constitutions and manner in which power is conferred discussed by High Court. *Deakin* v *Webb*; *Lyne* v *Webb* (1904) 1 C L R 585, at p 606, 10 A L R 237, at p 240; [illegible] v *Commissioners of Taxation N S W* (1907) 4 C L R 1087, at pp 1112, 13 A L R [illegible]. See also Supplementary Notes *infra* pp 107 110.

States. Extent to which bound by Commonwealth laws. As to the effect of this section either alone or jointly with covering clause 5, in binding the Crown in right of a State so far as any law validly made under it purported to affect the Crown in that right see *Amalgamated Society of Engineers* v. *Adelaide Steamship Co Ltd* (1920) 28 C L R 129 at p 153 (see also pp 160 [illegible] 171 [illegible]), 26 A L R 337, (see also pp 343, [illegible]).

As to whether this section authorizes the imposition on the States or other [illegible] which are not subject to the condition that funds shall be [illegible] by the Parliaments of the States see *Australian Railways Union* v. *Victorian Railways Commissioners* (1930) 44 C L R 319 at pp 352 [illegible], 37 A L R 37, at pp 44 59; *New South Wales* v. *Commonwealth* (No 1) (1932) 46 C L R 155 at pp 175 7, 38 A L R 245, at pp 249 50.

Retrospective laws, power to pass.—As to the power of the Parliament to pass retrospective laws, see *Colonial Sugar Refining Co Ltd* v. [illegible] (1910) St R Qd 261 at [illegible]. See also *R* v. *Kidman* (1915) 20 C L R 425, 21 A L R 405. As to the power of the Parliament to impose taxation retrospectively see *Donohoe* v. *Britz* (1904) 1 C L R [illegible] at p [illegible], 10 A L R (C N) [illegible]. See also Supplementary Notes *infra* p 113.

As to whether the Parliament has power by retrospective legislation to make unlawful an act which was lawful at the time when it was done see *Donohoe* v. *Britz* (1904) 1 C L R 391, at p 402, 10 A L R (C N) 49.

(b) Held by the High Court that the words "subject to this Constitution" render it necessary, in considering each placitum of s. 51, over and beyond the general fundamental considerations applying to all the placita, to consider whether there is anything in the Constitution which falls within the express limitation referred to in the words "subject to this Constitution". *Amalgamated Society of Engineers* v. *Adelaide Steamship Co Ltd*, (1920) 28 C L R 129 at p 144, 26 A L R 337 at p 340. See also *Eastern Extension, Australasia, and China Telegraph Co Ltd* v. [illegible] *Commissioner of Taxation*, (1923) 33 C L R 426, at p 451, 30 A L R 144, at p 152; *Bradshaw* v. [illegible] *Commonwealth* (1925) 36 C L R 585, at p. 596, 31 A L R 441, at p. 446.

Fact that legislative powers granted by s. 51 are subject to the Constitution discussed by High Court *Duncan* v. *State of Queensland* (1916) 22 C L R 556 at pp [illegible] 538, 618, 636 7, 639 644, 22 A L R 465, at pp 473 478 490 [illegible], 500.

(c) As to the plenary nature of the legislative power conferred by these words see *Colonial Sugar Refining Co Ltd* v. *Irving* 1903 St R Qd 261 at pp [illegible] 271; *D'Emden* v. *Pedder* (1904) 1 C.L.R. 91, at pp. 110-113, 10 A L R (C N) 20; *Robtelmes* v. *Brenan* (1906) 4 C L R 395, at pp 401, 415, 419 20; 12 A.L.R. 168, at pp 170, 175, 177 8; *R* v. *Kidman* (1915) 20 C L R 425, at p 439, 21 A L R 405, at p. 417; *Amalgamated Society of Engineers* v. *Adelaide Steamship Co Ltd* (1920) 28 C L R 129, at p 165, 26 A L R 337, at p 348.

As to the plenary nature of the legislative power conferred upon the Commonwealth Parliament, and its power to delegate, see *Baxter* v. *Ah Way*, (1909) 8 C L R 626, at pp 634 640, 642 646, 15 A L R 603, at pp 605 7, 608 10; *Roche* v. *Kronheimer* (1921) 29 C L R 329, at pp 337 340, 27 A L R 254, at pp. 258 9; *Huddart Parker Ltd* v. *Commonwealth* (1931) 44 C L R 492, at p 512, 37 A L R 22, at p 27; *Victorian Stevedoring and General Contracting Co Pty Ltd and Meakes* v. *Dignan*, (1931) 46 C L R 73, at pp 83-4, 86 7, 89 102, 113 24, 38 A L R 22, at pp 24 32, 36 40; *Crowe* v. *Commonwealth*, (1935) 54 C L R 69, at pp 83 84, 91 94, [illegible] A L R [illegible], at pp 447 448, 450 451.

Terms in which legislative power of Commonwealth is conferred discussed by Privy Council *Attorney-General for the Commonwealth* v. *Colonial Sugar Refining Co Ltd*, 1914 A C 237 at pp 254-5, 17 C.L.R. 644, at pp 653 4, 20 A L R 22 at p 27.

Meaning of terms "peace, order, and good government of the Commonwealth" discussed by High Court *R* v. *Commonwealth Court of Conciliation and Arbitration and Merchant Service Guild of Australasia*, (1912) 15 C.L.R. 586 at p 600, 19 A.L.R 45 at p 53.

(d) Meaning of words "with respect to" discussed by High Court *Attorney-General for New South Wales* v. *Brewery Employees Union of New South Wales*, (1908) 6 C L R 469, at p 610, 14 A L R. 565, at p. 612; *Australian Boot Trade Employees Federation* v. *Whybrow & Co* (1910) 11 C L R. 311, at p. 339; 16 A.L.R. 513, at p 523; *R* v. *Kidman*, (1915) 20 C L R 425, at pp 449 453, 462, 21 A.L.R. 405, at pp. [illegible]; *Cressin & Son* v. *Colac Co-operative Farmers Ltd* (1916) 21 C L R 205, at pp. 212,

214, 226, 22 A L R 86 at pp 88 89, 92 *Parry* v *Burrell*, (1916) 21 C L R 113, at p 457, 22 A L R 201, at p 211 *Stamp Australian Glass Manufacturers Co Ltd* (1917) 23 C L R 226, at p 244, 23 A L R 273 at p 280 *Waterside Workers Federation of Australia* v *Commonwealth Steamship Owners Association* (1920) 28 C L R 209, at pp 232 242, 26 A L R 243 at pp 242 246 *Commonwealth* v *Queensland* (1920) 28 C L R 1, at pp 20 1, 27 A L R 73 at p 81, *R* v *Macfarlane Ex parte O'Flanagan and O Kelly* (1923) 32 C L R 518 at pp 557 574, 29 A L R 353 at pp 369, 376

Test for ascertaining whether a law is a law "with respect to" a particular subject, discussed by High Court *Huelant Parker & Co Pty Ltd* v *Moorehead* (1909) 8 C L R 330 at pp 410–5, 16 A L R 241, at pp 271 2 *Ex parte McArthur Ltd* v *Queensland* (1920) 28 C L R 530 at p 560, 27 A L R 150, at p 144, *Ex parte Walsh and Johnson, In re Yates* (1925) 37 C L R 36, at pp 81 116–7, 32 A L R 46 at pp 58 9, 72 3 *Victoria* v *The Commonwealth*, (1926) 38 C L R 399, *Roughley* v *New South Wales Ex parte Isaac* (1928) 41 C L R 102, at pp 109 10 32 A L R 1, at pp 13 4, *In re Judiciary and Navigation Acts* (1921) 29 C L R 257, at pp 264 274 28 A L R 193 at pp 196 198, *George Hudson Ltd* v *Australian Timber Workers Union* (1923) 32 C L R 413 at p 460 30 A L R 13 at p 25

(i)[a] Trade and commerce with other countries, and among the States:

NOTES OF CASES

(a) N b The notes on this placitum are arranged under the following headings —

(i) *General scope of this placitum and whether exclusive or concurrent*
(ii) *Meaning of trade and commerce*
(iii) *Extent of power to regulate trade with other countries*
(iv) *Limits and scope of particular trade power*
(v) *Duties on goods from States Tariff*
(vi) *Application of State laws and of Commonwealth laws passed under this placitum*
(vii) *Effect of s 92 on this placitum*
(viii) *Effect of this placitum when read with s 98*

(i) *General scope of the placitum and whether exclusive or concurrent*

As to whether the power conferred upon the Commonwealth by this placitum is concurrent or an exclusive power see *Attorney General of New South Wales* v *Collector of Customs for N S W* (1908) 5 C L R 818 at pp 8 1 8 3 14 A L R 516 *Ex parte N S W Attorney Ltd* v *Queensland* (1920) 28 C L R 0 at p 61 27 A L R 1 0 at p 14 *Huelant* v *Ashley* (1924) 38 C L R 341 at p 404 31 A L R 6 at p 70 *Ex parte* v *New South Wales* *Ex parte Isaac* (1928) 42 C L R 162 at pp 198 200 34 A L R 1 at p 14 *Ex parte* v *Victoria* (1928) 42 C L R 69 at p 94 34 A L R 21 at p *Ashbury* v *Ashbury* (1930) 44 C L R 329 at p 33 37 A L R 1 at p 4 *Ex parte Hall* (1931) 50 C L R 6 at p 25 40 A L R 1 at p

Held by the Privy Council that subject to the limitation of s 92 the Parliament has complete power to make laws with respect to trade and commerce *James* v *Commonwealth* 1930 A C 578 C L R 1 42 A L R

As to the power of the Parliament of the Commonwealth to confer duties of customs under this placitum to any board appointed by the Governor General see *Commonwealth* v *Colonial Combing &c Co Ltd* (1922) 31 C L R 421 at p 444 *Peanut Board Act* 1919 as to the power of the Parliament to delegate functions see *Australian Commonwealth Shipping Board* (1924) 35 C L R 1 at p 9 3 A L R 61 at p 63 See also *Attorney General for Victoria* v *Commonwealth* (1926) 38 C L R 41 A L R 240

As to whether the power conferred in this placitum supports the validity of the provision of the *Trading with the Enemy Act* 1914 *Bell Bell & Co Pty Ltd* v *Commonwealth* (1916) 22 C L R 268 at p 278 23 A L R 398 at 402

Question whether the power contained in this placitum extends to the control of radio broadcasting discussed by High Court *R* v *Brisbane Peoples Block Theatre Ltd* (1930) 44 C L R 262 at pp 280 1 285 90 43 A L R 49 at pp 5 55

Held by the High Court that the *Dried Fruits Act* 1928 is a Commonwealth law which purports to control inter state trade in dried fruits is valid *James* v *Commonwealth* (1930) 52 C L R 570 41 A L R 275 On appeal held by the Privy Council that the *Dried Fruits Act* 1928 1930 is invalid *James* v *Commonwealth* 1936 A C 578 55 C L R 1 42 A L R

As to the validity of the *Telegraph Act* 1901 1 3 and the *Wireless Telegraphy Act* 1905 (Commonwealth) under this placitum and placitum (v) see *James* v *Commonwealth*, 1936 A C 578 55 C L R 1 42 A L R

As to the validity of the following Commonwealth Acts under this placitum namely *Secret Commissions Act* 1905 *Commerce (Trade Descriptions) Act* 1 30 1933 *Industrial Substance Preservation Act* 1906 1930 *Seat Carriage of Goods Act* 1924 and *Transport Workers Act* 1928 1929 see *James* v *Commonwealth* 1936 A C 578 C L R 1 42 A L R 33

(ii) *Meaning of trade and commerce*

Meaning of trade and commerce discussed by High Court *Huelant Parker Ltd* v *Queensland*, (1920) 28 C L R 530 at p 565 27 A L R 150 at p 144 And by Privy Council *James* v *Commonwealth* 1936 A C 578, 55 C L R 1 42 A L R 33 Held by the Privy Council that the trade and commerce to which this placitum applies has a wider range than the trade and commerce referred to in s 92 *Ibid*

Extent of power of Commonwealth to legislate with respect to trade and commerce discussed by High Court *Ex parte Nelson (No 1)* (1928) 42 C L R 209 at pp 230 4 239 240 242 252 4 35 A L R 21 at pp 27 9 31 2 36 7 *Ex parte Nelson (No 2)* (1929) 42 C L R 298 at pp 264 267, 272 5, 35 A L R 177 at pp 179 81 183 4

Held by the High Court (Rich Dixon and Evatt JJ Starke J dissenting) that s 3 of the *Transport Workers Act* 1928 1929 which gives the Governor General power to make regulations with respect to the employment of transport workers is a valid exercise of the power of the Parliament to make laws with respect to trade and commerce *Huelant Parker Ltd* v *Commonwealth*, (1931) 44 C L R 492 37 A L R 22

Held by the High Court that the Transport Workers (Waterside Employment) Regulations (S R 1931 No 34) are within the power of the Parliament to make laws with respect to trade and commerce *Dignan* v *Australian Steamships Pty Ltd* (1931) 45 C L R 188 37 A L R 213

Held by the High Court that it is within the power of the Parliament to confer upon the Governor General the power contained in s 3 of the *Transport Workers Act* 1928–1929 to make regulations with respect to the employment of transport workers and in particular for regulating the engagement, service and discharge of such workers and the licensing of persons engaged as transport workers, and for regulating or prohibiting the employment of unlicensed persons as transport workers, and for the protection

of transport workers *Victorian Stevedoring and General Contracting Co Pty Ltd and Meakes v Dignan*, (1931) 46 C L R 73, 58 A L R 22 Held also that regulations made in exercise of such power, although they restricted the loading and unloading of interstate and overseas vessels to members of a specified industrial union, and to returned soldiers and sailors and may have been made in pursuance of the industrial policy of the Executive, were, nevertheless, within the trade and commerce power conferred by this placitum *Ibid*

(iii) *Power as regards trade with other countries*

Held by the High Court that this placitum and placitum (ii) (taxation) empowered the Parliament to enact s 52 (*g*) of the *Customs Act* 1901 and by which the importation of goods specified by the Governor-General by proclamation is prohibited *Barter v Ah Way* (1909) 8 C L R 906, 15 A L R 603

As to the power of the Parliament under this placitum to regulate the conditions under which goods may be exported to other countries see *Woodlock Central Dairy Co Ltd v Commonwealth and Comptroller General of Customs* (1912) 15 C L R 231 at pp 240-250, 18 A L R 403 at pp 406, 407

As to whether this placitum authorizes the enactment of s 152 of the *Customs Act* 1901-1910—which provides for the alteration of contracts for the sale of goods of external origin in consequence of alterations in the rates of duty—see *Crespin & Son v Colonial Corporate Farmers Ltd* (1916) 21 C L R 204, at p 222, 22 A L R 86 at p 92

As to whether this placitum supports s 88A of the *Immigration Act* 1901-1920 which empowers the Minister in certain events to order to a Board the question whether a certain person not born in Australia should be deported from the Commonwealth see *Ex parte Walsh and Johnson; in re Yates*, (1925) 37 C L R 36 at pp 66-70, 80-90, 94-95, 104-115, 127, 136, 31 A L R 48 at pp 53-54, 62-66, 72, 76, 80

Held by the High Court that the entry by the Municipal Council of Sydney into a contract for the erection of a bacteriosing plant in New South Wales for the treatment of being manufactured outside Australia did not amount to engaging in the Commonwealth and was not concerned with other countries within the meaning of this placitum *R v Coates; Ex parte Walsh* (1928) 41 C L R 511

The *Dried Fruits Export Control Act* 1924-1933 (Commonwealth) and regulations made thereunder purport to control the distribution overseas of dried fruits exported from Australia and to penalise certain acts that may be done outside Australia. Held by the High Court that the Act is authorized by this placitum and that in neither the Act nor the regulations provided for the ground that they have extra territorial operation *Crowe v Commonwealth* (1935) 54 C L R 69, 9 A L R 145

(iv) *Local and inter-state trade power*

As to the limits of the power to legislate with respect to interstate trade see *Hull and Sons v The Queen* (1920) 28 C L R 93 at p 120, 33 A L R 13 at p 24, *Wragg (W & A) Ltd v New South Wales* (1920) 28 C L R 229, 27 A L R 10, *Ian v Commonwealth* (1940) 63 C L R 578, 14 A L R 453

Held by the High Court that the legislative authority of the Commonwealth Parliament under the powers contained in section 51 (i) and (xx) of the Constitution with limitations of employment does not extend further than to prohibit or impose affecting interstate trade and prohibitions from being employed in such trade of persons who are *Federated Engine-Drivers and Firemen's Association of Australasia v New South Wales Railway Traffic Employees Association* (1906) 4 C L R 488, 13 A L R 273 See also *Jumbunna Coal Mine No Liability v Victorian Coal Miners' Association* (1908) 6 C L R 309 at p 317, 14 A L R 701 at p 704

As to the power of the Parliament of the Commonwealth under this placitum to regulate the conduct of men in relation to acts of an interstate trade and commercial character and the use of things employed in and about those acts see *New South Wales v Commonwealth* (1915) 20 C L R 54 at p 100, 21 A L R 129 at p 147

Question as to the inconsistency between the regulation by the Commonwealth of certain portions of interstate trade and commerce and State legislation discussed by High Court *Stuart Motor Haulage Ltd v Forsyth* (1935) 48 C L R 128 at p 148, 38 A L R 408 at p 419

Question as to when goods will have reached the subject of interstate trade or to be such discussed by Stephen J (Supreme Court of New South Wales) *Ex parte Smith; Re Shellpson* (1932) 49 W N N S W) 76

(v) *Exclusion of purely intra-State trade*

As to the effect of this placitum and s 107 in withdrawing the Commonwealth Parliament's regulation of domestic trade and commerce see *R v Barger Commonwealth v Mark* (1906) 4 C L R 1441 at p 14 A L R 74, *Hutchinson Publishing Co Pty Ltd v Mosbey* (1909) 8 C L R 90 at pp 348, 350, 354, 366, 372, 393, 402, 404, 409, 411, 413, 415, 416, 1 A L R 241 at pp 243, 246, 264, 267, 270

Held by the High Court that it does not by implication from this placitum that the power of Parliament does not extend to trade and commerce within a State and consequently the power to legislate as to internal trade and commerce is reserved to the States s 107 to the exclusion of the Commonwealth *Attorney-General of New South Wales v Brewery Employees Union of New South Wales* (1908) 6 C L R 469, 14 A L R 265 See also cases under sub-heading (viii) *infra* p 24

As to the invalidity of a provision in the *Customs Act* 1901 relating to the regulation of the internal affairs of a State which such provision is not incidental to the regulation of importation see *Lyons v Smart* (1908) 6 C L R 145 at pp 147, 154, 14 A L R 228 at pp 230, 232

Held by the High Court that this placitum does not empower the Parliament to enact s 7 of the *Seamen's Compensation Act* 1909 which purports *inter alia* to regulate purely intra-State trade *Owners of S S Barbara Hall v* (1910) 11 C L R 689, 17 A L R 150

As to the reservation to the States of the control of done in that except so far as it is taken away by express words or necessary implication see *R v Commonwealth Court of Conciliation and Arbitration and Merchant Service Guild of Australasia* (1912) 15 C L R 586 at pp 593, 600, 19 A L R 45, at pp 46, 49

Held by the High Court that that portion of s 4 of the *Air Navigation Act* 1920 (Cth) which purports to give the Governor-General power to make regulations for the purpose of providing for the control of air navigation generally throughout the Commonwealth is invalid *R v Burgess; Ex parte Henry* (Judgment delivered 10th November 1936)

As to whether, when interstate trade and intra-State trade are so intermingled that it is practically essential to control all of them as one subject-matter the Commonwealth Parliament has power to deal with intra-State trade as well as with interstate trade see *Ex parte Nelson (No 1)*

(vi) *Application to State operations of Commonwealth Acts passed under this placitum*

As to the power of the Commonwealth under this placitum to affect the operations of State Governments see *Attorney-General of New South Wales v Collector of Customs for New South Wales*, (1908) 5 C L R 818, 14 A L R 516 (This case overruled the decision of the Full Court of the Supreme Court of New South Wales in *Attorney-General of New South Wales v Collector of Customs for New South Wales* (1903) 3 S R, N S W 115)

Reference to States in this placitum cited in support of the view that when the Constitution means that the powers conferred on the Parliament of the Commonwealth shall not be applied to State operations, the Constitution expressly says so *Merchant Service Guild of Australasia v Commonwealth Steamship Owners' Association (No 2)* (1920) 28 C L R 130 at p 151, 27 A L R 161 at p 164

Generally as to the application of Commonwealth Acts to State operations, see Supplementary Notes, infra, pp, 109, 110

(vii) *Effect of s. 92 on this placitum.*

Effect of s. 92 of the Constitution upon the powers conferred upon the Parliament of the Commonwealth by this placitum discussed by High Court *New South Wales* v *Commonwealth*, (1915) 20 C.L.R. 54, at pp. 104 5, 21 A.L.R. 128 at p. 149 *Duncan* v *State of Queensland*, (1916) 22 C.L.R. 556, 22 A.L.R. 465, *Bank of New South Wales and McArthur Ltd* v *State of Queensland* (1920) 28 C.L.R. 530, 27 A.L.R. 180 (overruling *Duncan* v *State of Queensland* supra) *Radford Parker Ltd* v *Commonwealth* (1931) 44 C.L.R. 492, 37 A.L.R. 22 *R* v *Hazelton; Ex parte Hall* (1933) 50 C.L.R. 30 at p. 85, 40 A.L.R. 16 at p. 34 *James* v *Commonwealth* (1935) 52 C.L.R. 570, 41 A.L.R. 275 And by Privy Council *James* v *Commonwealth* 1936 A.C. 578, 55 C.L.R. 1, 43 A.L.R. 33

(viii) *Effect of this placitum when read with s. 98*

Held by the High Court that the powers contained in this paragraph are not enlarged by s. 98 of the Constitution *Owners of SS. Kalibia* v *Wilson* (1910) 11 C.L.R. 689, 17 A.L.R. 410

Held by the High Court (Isaacs, Gavan Duffy, Powers and Rich, *JJ.*, Griffith, *C.J.*, and Barton, *J.* dissenting) that this placitum coupled with s. 98 confers upon the Commonwealth Parliament power to legislate as to navigation and shipping so far as concerns inter-state traffic, and in particular to regulate the reciprocal rights and obligations of those engaged in carrying on that traffic by means of ships. Held further by the same Judges that the *Seamen's Compensation Act* 1911 is a valid exercise of the legislative power of the Commonwealth Parliament *Australian Steamships Limited* v *Malcolm* (1914) 19 C.L.R. 298, 21 A.L.R. 37

Held by the High Court that the effect of s. 51 (i.) and s. 98 of the Constitution is to endow the Parliament not with a substantive power to deal with navigation and shipping at large, but only with power to deal with that subject in so far as it is relevant to inter-state and foreign trade and commerce. Held therefore that the provisions of the *Navigation Act* 1912-1920 and the Schedules thereto and of the regulations made thereunder as to the manning of and accommodation on ships to the extent that they purport to prescribe rules of conduct to be observed in respect of ships engaged solely in the domestic trade and commerce of a State are beyond the power of the Parliament of the Commonwealth and ultra to that extent invalid. *Newcastle and Hunter River Steamship Co. Ltd* v *Attorney General for the Commonwealth* (1921) 29 C.L.R. 357, 27 A.L.R. 365

Held whether an inter-State vessel may be used for the purposes of inter-state or foreign trade although it may carry goods only between ports in the same State *Scott* v *Newcastle and Hunter River Steamship Co. Ltd* v *Attorney General for the Commonwealth* (1921) 30 C.L.R. 378, 37 A.L.R. 73 at p. 376

As to whether this paragraph coupled with s. 98 excludes the operation of the Colonial Laws Validity Act on laws made by the Commonwealth Parliament with respect to navigation and shipping and exempts the Commonwealth Parliament from the restriction on colonial legislation imposed by ss. 735 and 736 of the *Merchant Shipping Act* 1894 see *Huddart Parker & Co. of New Zealand Ltd* v *Commonwealth* (1920) 28 C.L.R. 129 at pp. 140, 147, 164, 27 A.L.R. 69 at pp. 77, 275, 283

As to whether this placitum coupled with s. 98 empowers the Parliament of the Commonwealth to confer on a Court of Marine Inquiry matters of importance arising between two steamships engaged in inter-State trade when a collision occurred at a place which did not lie outside the course ordinarily used by ships engaged in coastal trade between the two countries or among the States (the two steamships having been at least 30 miles apart at the time the collision took place) see *R* v *Turner*; *Ex parte Marine Board of Hobart*; *Insurance Co. Commonwealth* (1927) 39 C.L.R. 411, at pp. 421, 431, 437, 442, 451, 452, 454, 39 A.L.R. 174 at pp. 177, 181, 184, 187)

As to whether s. 478 of the Merchant Shipping Act 1894 enables the Parliament of the Commonwealth to alter the nature of the jurisdiction exercised by any Commonwealth Court so as to affect the division of powers which the Constitution makes between Commonwealth and State see *R* v *Turner*, *Ex parte Marine Board of Hobart*; *In re Inman* v *Commonwealth* (1927) 39 C.L.R. 411, 39 A.L.R. 171

(ii.) Taxation[a]; but so as not to discriminate[b] between States or parts of States[c].

NOTES OF CASES

(*a*) Notes (*a*) are arranged under the following sub-headings:—

(i) *Taxation general*
(ii) *Customs and Excise*
(iii) *Estate Duty*
(iv) *Income Tax*
(v) *Land Tax*

(i) *Taxation general*

Per Griffith *C.J.* The taxation provided for in this placitum is federal taxation for federal purposes *Municipal Council of Sydney* v *Commonwealth* (1904) 1 C.L.R. 208, at p. 232 10 A.L.R. (C.N.) 29 at p. 30

As to the application to the States of this exercise of the power of taxation, see *Attorney General of New South Wales* v *Collector of Customs for New South Wales* (1908) 5 C.L.R. 818, 14 A.L.R. 516

Nature and limits of the taxation power conferred upon the Commonwealth Parliament by this placitum discussed by High Court *R* v *Barger*; *Commonwealth* v *McKay*, (1908) 6 C.L.R. 41, 14 A.L.R. 374.

Effect of the reservation of powers to the States upon the power conferred by this placitum discussed by High Court *R* v *Barger*; *Commonwealth* v *McKay*, (1908) 6 C.L.R. 41, 14 A.L.R. 374

As to whether the power of the Commonwealth to make laws with respect to taxation is wider than the United States power to lay and collect taxes, see *Attorney General for New South Wales* v *Brewery Employés' Union of New South Wales* (1908) 6 C.L.R. 469 at p. 611, 14 A.L.R. 565 at p. 614

Held by the High Court that in the exercise of the power of taxation conferred by this placitum, the Parliament in selecting subjects of taxation is entitled to take things as it finds them *in rerum natura*, irrespective of any positive laws of the States prescribing rules to be observed with regard to the acquisition or devolution of formal title to property, or the institution of judicial proceedings with regard to it *Morgan* v *Deputy Federal Commissioner of Land Tax, New South Wales*, (1912) 15 C.L.R. 661, 19 A.L.R. 120

Held by the High Court that the limitations imposed by s. 55 of the Constitution upon the making of laws imposing taxation apply only to such laws as are made under the power conferred by this placitum, and not to laws made under the power contained in s. 122 to make laws for the government of Territories. *Buchanan* v *Commonwealth* (1913) 16 C.L.R. 315, 19 A.L.R. 251.

As to the power of taxation contained in this placitum including a power to take steps to prevent evasion of the revenue by acts which might themselves be lawful, see *National Trustees Executors and Agency Co. of Australasia Ltd* v. *Federal Commissioner of Taxation*, (1916) 22 C.L.R. 367, at p. 376; 22 A.L.R. 409, at p. 412.

As to whether the Commonwealth could impose taxation upon municipal corporations created under State law, see *Federated Municipal and Shire Council Employees' Union of Australia* v *Melbourne Corporation*, (1919) 26 C.L.R. 508, at p 518; 25 A.L.R 309, at p. 313.

In war time the Executive Government of the Commonwealth entered into certain agreements with a manufacturer of woolfops, under which, in consideration of the payment by the Company to the Government of a share of the profits (in the agreements called a "licence fee") the Government consented to the sale of the wooltops. As to whether the agreements (providing as they did for the payment of money to the Government as the price of consents) were taxation and being without Parliamentary authority, were void, see *Commonwealth* v *Colonial Combing, Spinning and Weaving Co Ltd.*, (1922) 31 C.L.R. 421, 29 A.L.R 136.

Held by the High Court that, on the principle laid down in the *Engineers' Case*, the assessment of Federal income tax in respect of the salaries of persons employed in the Public Service and the Railway service of the State of New South Wales was valid, that the persons in question were not exempt from such taxation, and that the Parliament of the Commonwealth had power to impose income tax upon them *Dawson* v *Federal Commissioner of Taxation*, (1923) 20 A.L.R 129

As to the wide nature of the power of "taxation" conferred on the Commonwealth Parliament, see *Federal Commissioner of Taxation* v *Munro* *British Imperial Oil Co Ltd.* v *Federal Commissioner of Taxation* (1926) 38 C.L.R 153 at pp 200 203, 213 5, 32 A.L.R 339, at pp. 357–8, 362 3, *Executor Trustee and Agency Co of South Australia Ltd* v *Deputy Federal Commissioner of Taxation (S.A.)*, (1928) 41 C.L.R 299, at p 310, 34 A.L.R 188, at p 392

Question as to whether a Commonwealth law with respect to taxation could render void, as inconsistent with it, a State law imposing direct taxation, discussed by High Court *Stock Motor Ploughs Ltd* v *Forsyth*, (1932) 48 C.L.R 128, at p 148, 38 A.L.R 408, at p 415

(ii) *Customs and Excise*

Held by the Full Court of Victoria that this placitum gives power to make laws declaring it an offence for an overseas ship, whose stores have been sealed upon her arrival at one Australian port from overseas, to enter another Australian port with seals broken *Kingston* v *Gadd* (1901) 27 V.L.R 417, 7 A.L.R 265, 23 A.L.T 152. Decision affirmed by Privy Council on appeal *Peninsular and Oriental Steam Navigation Co.* v *Kingston*, 1903 A.C 471, 9 A.L.R (C.N.) 65 See also *Ex parte Oesselmann*, (1902) 2 S.R, N.S.W 438

As to taxation including customs and excise duties, see *Colonial Sugar Refining Co Ltd* v *Irving*, 1903 S.R Qd. 261 at pp 271 4 279, 1905 A.C 360 at p 366

As to the power of the Parliament of the Commonwealth to make a Tariff Act retroactive, and to impose the duties from the date of the resolution, see *Colonial Sugar Refining Co Ltd* v *Irving*, 1903 S.R Qd 261, at pp 271–3, 279, 1905 A.C 360, at p 366

Held by the High Court that this power includes the power to levy duties of customs *Attorney-General of New South Wales* v *Collector of Customs for New South Wales*, (1908) 5 C.L.R 818, 14 A.L.R 516

Held by the High Court (Griffith, *C.J.*, Barton and O'Connor, *JJ.*, Isaacs and Higgins, *JJ.*, dissenting) that an Act purporting to impose duties of Excise on certain manufactured goods, with a proviso that the Act shall not apply to any such goods manufactured under satisfactory conditions of labour is not in substance an Act to impose duties of Excise, but an Act to regulate the conditions of manufacture of the goods. *R* v *Barger* *Commonwealth* v *McKay*, (1908) 6 C.L.R 41, 14 A.L.R 374

As to the *Customs Act* 1901 being in some respects referable to the power of taxation contained in this placitum, see *Lyons* v *Smart*, (1908) 6 C.L.R 145, at p 154, 14 A.L.R 328, at p 332

Held by the High Court that this placitum and placitum (i) (trade and commerce) empower the Parliament to enact s 52 (*g*) of the *Customs Act* 1901 under which the importation of goods may be prohibited by proclamation *Bazley* v *Ah Way*, (1909) 8 C.L.R 626, 15 A.L.R 603

Held by the High Court that s 152 of the *Customs Act* 1901–1910 (as to the alteration of contracts for the sale of goods of external origin, where a rate of duty is altered) is a valid exercise of the power to make laws with respect to taxation *Crespin & Son* v *Cudal Co-operative Farmers Ltd* (1916) 21 C.L.R 205, 22 A.L.R 86

Per Dixon, J., The power of the Parliament to impose duties of customs and excise is conferred by this placitum as part of the power to make laws with respect to taxation *Vacuum Oil Co Pty Ltd* v *Queensland*, (1934) 51 C.L.R 108, at p 120, 40 A.L.R 154, at p 160

(iii) *Estate Duty*

Held by the Supreme Court of South Australia (Murray, *C.J.*), that the substantial effect of the Apportionment clause (s 35) of the *Estate Duty Assessment Act* 1914 (Commonwealth) is to impose a duty on the beneficial interests taken under a will or intestacy, and that it is not *ultra vires* the Parliament of the Commonwealth but is within the power conferred by this placitum *In re Robert Barr Smith*: *Martin* v *Barr Smith* 1917 S.A.L.R 1

Held by the High Court that s 8 (4) (*a*) of the *Estate Duty Assessment Act* 1914–1928 – which provides for estate duty being levied and paid on the personal property, wherever situated, left by a person who at the time of his decease was domiciled in Australia – is within the power conferred upon the Parliament by this placitum. *Trustees Executors and Agency Co Ltd* v *Federal Commissioner of Taxation*, (1933) 49 C.L.R. 220, 39 A.L.R 367

(iv) *Income Tax*

Held by the High Court that the provisions of s 16 (2) of the *Income Tax Assessment Act* 1915–1918, which provide[illegible] "where, in the opinion of the Commissioner, a company has not in any year distributed to its members or shareholders a reasonable proportion of its taxable income, the taxable income of the company shall be deemed to have been distributed to the members or shareholders in proportion to their interests in the paid-up capital of the company if the Commissioner is satisfied that the total tax payable on it as distributed income is greater than the tax payable on it by the company", are within the powers conferred by this placitum *Cornell* v *Deputy Federal Commissioner of Taxation (South Australia)*, (1920) 29 C.L.R. 39; 26 A.L.R 295

Held by the High Court that the Parliament of the Commonwealth has power under this placitum to impose income tax on dividends received by a person resident and domiciled in England who holds shares in companies incorporated in England and Australia respectively, but carrying on business in Australia and deriving their main income from sources in Australia *Murray* v. *Federal Commissioner of Taxation*, (1921) 29 C.L.R 134, 27 A.L.R 116

Held by the High Court (Evatt, *J.*) that s. 20 (2) (*b*) of the *Income Tax Assessment Act* 1922–1932—which requires a company to pay income tax on the interest paid by it to any person, who is an absentee, on money raised by debentures of the Company and used in Australia is a law with respect to taxation, and valid. *Colonial Gas Association Ltd* v. *Federal Commissioner of Taxation*, (1934) 51 C.L.R. 172, at p. 183; 40 A.L.R. 187, at p 193, 2 A.T.D 157, at p 464

As to whether s. 67 (1) of the *Income Tax Assessment Act* 1922–1934 in imposing an additional tax or a minimum sum of £1, does in effect penalize an offence, and, if so, whether the doing of this otherwise than by means of the judicial power is incidental to the legislative power with respect to taxation, see *Jolly* v. *Federal Commissioner of Tax Also*, (1935) 53 C.L.R. 266 at p 211, 41 A.L.R 211, at pp 212–3.

(v) *Land Tax*

Held by the High Court that the *Land Tax Act* 1910 and the *Land Tax Assessment Act* 1910 are an exercise of the power of the Commonwealth to make laws with respect to taxation *Osborne v Commonwealth* (1911) 12 C L R 321, 17 A L R 242

Held by the Supreme Court of Victoria that s 63 of the *Land Tax Assessment Act* 1910 (Commonwealth) which provides for the avoidance of contracts agreements or arrangements, so far as they have or purport to have the purpose or effect of altering the incidence of land tax is within the powers conferred by this placitum *Patterson v Farrell* 19 V L R 17, 17 A L R 502, 13 A L T 149

Held by the High Court that the provision in s 36 (2) of the *Land Tax Assessment Act* 1910 under which a husband or wife to whom land is transferred is deemed in certain event to be a joint owner, and as such liable to land tax is *ultra vires* not being incidental to the land taxation imposed by the Act *Waterhouse v Deputy Federal Commissioner of Land Tax South Australia* (1914) 17 C L R 665, 20 A L R 15)

Held by the High Court that the *Land Tax Assessment Act* 1910-1914 of the Commonwealth is not invalid—in so far as it imposes a tax upon Crown lessees [illegible] **in an Act attempting to control the administration of Crown lands Nor is it invalid in so far as it purports to impose taxation upon shareholders of companies in respect of land owned by the companies as not being land taxation** *Attorney General for Queensland v Attorney General for the Commonwealth* (1915) 20 C L R 148, 21 A L R 221 (Special leave to appeal to the Privy Council from this decision refused by Privy Council after full argument *Attorney General for Queensland v Attorney General for the Commonwealth* (1916) 22 C L R 402, 23 A L R 65)

(*b*) Held by the Full Court of the Supreme Court of Queensland and by the Privy Council that s 5 of the *Excise Tariff* 1902 which allowed an exemption in the case of goods in which excise duties had been paid under State legislation before 8th October 1901 was not a discrimination between States within the meaning of this placitum as the rule laid down by the Act is a general one applicable to all the States alike and the fact that it operates unequally in the several States arises not from anything done by the Parliament but from the inequality of the duties previously imposed by the States *Colonial Sugar Refining Co Ltd v Irving* 190 S R Q l 201, 1906 A C 369

Held by the High Court that an Act purporting to impose duties of excise on certain manufactured goods, with a proviso that the Act shall not apply to any such goods manufactured under conditions fixed by tribunals having power to fix different conditions for different States or areas is invalid as authorizing discrimination and therefore discrimination between States or part of States within the meaning of this placitum *R v Barger Commonwealth v McKay* (1908) 6 C L R 41, 14 A L R 374

Similarity of prohibition of discrimination contained in this placitum to the prohibition of the granting of preference contained in s 99 discussed by High Court *R v Barger Commonwealth v McKay* (1908) 6 C L R 41, at pp 82, 105, 111, 14 A L R 374 at pp 384, 391, 395 also *James v Commonwealth*, (1923) 41 C L R 442 at pp 455, 460

Held by the High Court that the *Land Tax Act* 1910 and the *Land Tax Assessment Act* 1910 do not discriminate between States or parts of States *Osborne v Commonwealth* (1911) 12 C L R 321, 17 A L R 242

Held by the High Court that the provisions of Income Tax Regulations 46 and 46A and Table III of those Regulations (S R 1918 No 31) which purported to fix different amounts as the fair average value of live stock in different States discriminated between States and parts of States and were therefore invalid as being in infringement of this placitum *Cameron v Deputy Federal Commissioner of Taxation* (1923) 32 C L R 68, 29 A L R 119

Meaning of discrimination discussed by High Court *James v Commonwealth*, (1923) 41 C L R 442, at pp 455, 460, 466—

As to whether the Financial Agreements Enforcement Act is a law with regard to the taking of moneys from citizens of one State and not discriminating between States see judgment of Isaacs J (dissenting) in *New South Wales v Commonwealth (No 1)* (1925) 36 C L R 578, at pp 600, 601, 31 A L R 270 at pp 290, 291

Nature of the discrimination prohibited by this placitum discussed by High Court *Elliott v Commonwealth* (1936) 54 C L R [illegible] at pp [illegible] 42 A L R 171 at p [illegible]

(*c*) Meaning of "preference" discussed by High Court *R v Barger Commonwealth v McKay* (1908) 6 C L R 41, 14 A L R 374 *Elliott v Commonwealth* (1936) 54 C L R 657, 42 A L R 171

Reference to States in this placitum cited in support of the view that when the Constitution means that the power conferred on the Parliament of the Commonwealth shall not be applied to State operations the Constitution expressly says so *Merchant Service Guild of Australasia v Commonwealth Steamship Owners Association* (No 2) (1920) 28 C L R 456 at p 481, 27 A L R 161 at p 164

(iii) Bounties on the production or export of goods, but so that such bounties shall be uniform throughout the Commonwealth[a]

NOTES OF CASES.—(*a*) As to whether the Parliament is precluded by the limitation contained in this paragraph from attempting to regulate the conditions which manufacturers had agreed upon, see *R v Barger, Commonwealth v McKay*, (1908) 6 C L R 41 at p 70, 14 A L R 374 at p [illegible]

As to whether the Commonwealth Court of Conciliation and Arbitration can be given jurisdiction to declare whether the conditions of employment observed by a claimant for bounty are fair and reasonable see *Iron Bounty Act* 1914 *Inquiry Minister of Trade and Customs* (1915) 9 C A R 201

Nature of the uniformity required by this placitum discussed by High Court *Elliott v Commonwealth* (1936) 54 C L R 657 at p 666, 42 A L R 174 at p 176

Per Latham C J A law providing for a bounty on the export of goods would and a law providing for a bounty on the production of goods would not be a law of trade or commerce within the meaning of s 99 *Elliott v Commonwealth* (1936) 54 C L R 657 at p 667, 42 A L R 174 at p 176

(iv.)[a] Borrowing money on the public credit of the Commonwealth:

NOTES OF CASES.—(*a*) **Held by the High Court (Knox C J Isaacs, Higgins, Rich and Starke JJ) that section 52B of the *Commonwealth Inscribed Stock Act* 1911-1918 which provides that "the interest derived from stock or Treasury bonds shall not be liable to income tax under any law of the Commonwealth or a State unless the interest is declared to be so liable by the prospectus relating to the loan on which the interest is payable"—is valid under the power conferred by this placitum** *Commonwealth v Queensland*, 1920) 29 C L R 1, 27 A L R 73

(v.) Postal, telegraphic, telephonic, and other like services[a];

NOTES OF CASES (*a*) As to whether this power authorizes the Parliament of the Commonwealth to make laws with respect to wireless telegraphy, see *Attorney General of New South Wales* v *Brewery Employees' Union of New South Wales*, (1908) 6 C L R 469, at p 501 14 A L R 560, at p 571

Held by the High Court (Latham *C J* Rich Starke Evatt and McTiernan *JJ* Dixon *J* dissenting) that this placitum gives the Parliament of the Commonwealth power to legislate with respect to radio broadcasting *R* v *Brislan Ex parte Williams* (1935) 54 C L R 262, 42 A L R 43 *Held also* that the *Wireless Telegraphy Act* 1905-1919 (Commonwealth) is a law with respect to a "telephonic or other like service" within the meaning of this placitum *Ibid* Meaning of "services" and "like services" discussed *Ibid*

As to the validity of the *Postal Electrical Act* 1901-1924 and the *Wireless Telegraphy Act* 1905 (Commonwealth) under this placitum and placitum (v) see *Fox* v *Commonwealth* (1935) 52 C L R 258, 42 A L R 343

(vi)[a] The naval and military defence of the Commonwealth and of the several States, and the control of the forces to execute and maintain the laws of the Commonwealth

NOTES OF CASES (*a*) As to whether this placitum confers exclusive power on the Commonwealth to make laws with respect to defence see *Hunter* v *Commissioners of Taxation* (N S W) (1907) 4 C L R 1087, at p 1127, 13 A L R 21, at p 329

Held by the High Court (Griffith *C J* Barton Isaacs Higgins and Powers *JJ* Gavan Duffy and Rich *JJ* dissenting) that the legislative powers of the Commonwealth Parliament conferred by this placitum and placitum (xxxix) include a power to fix, in the state of war which commenced in 1914 to fix within limits of locality the highest price which during the continuance of the war, may be charged for bread *Farey* v *Burvett* (1916) 21 C L R 433, 23 A L R 401

As to whether it is within the defence power for the Parliament of the Commonwealth to enlarge the area of enemies as dealt with by Proclamations relating to trading with the enemy, see *Welsbach Light Co of Australasia Ltd* v *Commonwealth of Australia* (1916) 22 C L R 268, at pp 279 5 278 9 286 7, 22 A L R 398, at pp 400 2 401

Held by the High Court (Barton, Isaacs Gavan Duffy Powers and Rich *JJ* Higgins, *J*, dissenting) that s 4 of the *Unlawful Associations Act* 1916-1917, in so far as it makes it an offence during the war 1914-1918 to encourage the destruction or injury of property is a valid exercise of the defence power conferred by this placitum and placitum (xxxix) *Pankhurst* v *Kiernan* (1917) 24 C L R 120, 24 A L R 154

As to the exclusive nature of the defence power which is assigned by this placitum to the Commonwealth and the limitation in Australia of the executive power of the Commonwealth Ministers *Joseph* v *Colonial Treasurer* (N S W) (1918) 25 C L R 497 at p 751 29 A L R 185, at pp 190 1 191 2

As to whether the Parliament of the Commonwealth has power under this placitum to enact a *provision dealing with the deportation of aliens* see *Ferrando* v *Pearce* (1918) 25 C L R 241, at pp 261 3, 274 6, 284 5 24 A L R 57 at pp 331 2 336 7 339 40

Validity of a regulation giving to the Attorney General power to direct the Public Trustee to sell shares which had been transferred to him by enemy shareholders which has been within the defence power of the Commonwealth *Burland* v *Oulds* (1918) 25 C L R 422

Held by the High Court that the power conferred by this placitum is not limited to the making of laws with respect to measures of defence to be taken within the territorial limits of the Commonwealth and that therefore the *War Precautions Act* 1914-1916 so far as it deals with the recruitment of forces for service outside Australia is within that power *Sterlini* v *Hiley* (1918) 25 C L R 506

As to the *Wheat Marketing Act* 1915-1915 (Vict) not being an exercise of the war power and as to that power being an exclusive power of the Commonwealth see *Duncan Workers Union* v *Irlands Milling Co Ltd*, (1919) 26 C L R 460 at pp 471 2 25 A L R 4 at p 10

Held by the High Court that s 19 of the *Imperial Soldiers' Repatriation Act* 1917-1918 which provides that claims in respect of moneys advanced by the trustees of the Australian Soldiers Repatriation Fund or by the Minister, or a State Repatriation Board or Local Committee shall have the same priority with respect to the payment of debts as if the moneys had been advanced by the Crown—is a valid exercise of the power conferred on the Commonwealth Parliament by this placitum to legislate with respect to defence *Attorney General (Commonwealth)* [illegible] 26 C L R 399 26 A L R 85 1920 V L R 139

Held by the High Court that the provision contained in s 2 (*c*) of the *War Precautions Act* 1914-1918 defining "the present state of war" as continuing until the issue of a proclamation that the war between the King and the German Empire and between the King and the Emperor of Austria King of Hungary had ceased is within the power conferred on the Parliament of the Commonwealth by this placitum *Jerger* v *Pearce* [illegible] (1920) 28 C L R 488

Held by the High Court that the *Treaty of Peace Act* 1919 is within the legislative power of the Parliament of the Commonwealth under this placitum *Roche* v *Kronheimer* (1921) 29 C L R 329, 27 A L R 254

Held by the Supreme Court of New South Wales (Harvey *J*) that the provisions of the *Treaty of Peace Act* 1919 and the Regulations thereunder the validity of which had been questioned on grounds other than those dealt with by the High Court in the case of *Roche* v *Kronheimer* were *intra vires* *Cooper* v *Frankenberg* (1921) 21 S R (N S W) 288, at p 11

As to whether it would be possible to object under the defence power to a person's conduct as a hindrance or obstruction to the peace order and good government of the Commonwealth, see *Ex parte Walsh and Johnson. In re Yates*, (1925) 37 C L R 36 at p 55, 32 A L R 46 at p 64

As to whether this power, coupled with the power contained in this placitum (xxxix) authorizes the establishment of businesses for the purposes of trade and wholly unconnected with any purpose of naval defence, see *Commonwealth* v *Australian Commonwealth Shipping Board*, (1926) 39 C L R 1 at p 9, 33 A L R 61, at p 64

Question whether the *Treaty of Peace Act* 1919 is a law with respect to naval and military defence or a law with respect to External affairs discussed by High Court (Evatt *J*) *Victorian Stevedoring and General Contracting Co Pty Ltd* and *Meakes* v. *Dignan*, (1931) 46 C L R 73 at p 122, 38 A L R 22, at p 40

As to whether the constitutional power of the Commonwealth to accept the mandate for New Guinea is derived from this placitum, see *Jolley* v *Manila*, (1933) 49 C L R 242, at p 250, 39 A L R 506 at p 508

The Commonwealth Government established a clothing factory in Melbourne for the purpose of making naval and military uniforms for the defence forces and uniforms for postal employees. In time of peace the operations of the factory included the supply of uniforms for other departments of the Commonwealth and also for State officers and for employees in various public utilities and institutions in the State and for some private persons. The Governor-General deemed such peace time operations of the factory necessary for the efficient defence of the Commonwealth inasmuch as the maintenance intact of the trained complement of the factory would assist it in meeting war time demands. In an action by the Attorney-General for Victoria, *ex relatione*, for a declaration that such operation of the factory was *ultra vires* the Commonwealth and for an injunction it was held by the High Court (Gavan Duffy, *C J*, Rich Evatt and McTiernan *JJ*, Starke *J* dissenting) that the operation of the factory for such purposes was authorized by the Defence Act and was within the defence power of the Commonwealth Legislature. *Attorney General for Victoria* v *Commonwealth*, (1935) 52 C L R 533, 41 A L R 246.

(vii) Lighthouses, lightships, beacons and buoys:

(viii) Astronomical and meteorological observations:

(ix)[a] Quarantine.

NOTES OF CASES. (*a*) As to the power of the Commonwealth under this placitum to interfere with the operations of State Governments, see *Attorney General of New South Wales* v *Collector of Customs for New South Wales* (1908) 6 C L R 818 at pp 841, 842; 14 A L R 516 at pp 521, 524.

As to quarantine being a concurrent power, see *Ex parte Nelson (No 1)*, (1928) 42 C L R 209, at pp 217, 249; 35 A L R 121 at pp 122, 130.

(x) Fisheries in Australian waters beyond territorial limits:

(xi) Census and statistics:

(xii)[a] Currency, coinage, and legal tender:

NOTES OF CASES. (*a*) As to whether this placitum empowers the Parliament of the Commonwealth to regulate the domestic affairs of the States, see *R* v *Barger*; *Commonwealth* v *McKay*, (1908) 6 C L R 41, at p 69; 14 A L R 374 at p 379.

(xiii)[a] Banking[b], other than State banking[c], also State banking extending beyond the limits of the State concerned, the incorporation of banks, and the issue of paper money:

NOTES OF CASES. (*a*) As to whether this placitum empowers the Parliament of the Commonwealth to regulate the domestic affairs of the States, see *R* v *Barger*; *Commonwealth* v *McKay*, (1908) 6 C L R 41, at p 69; 14 A L R 374 at p 379.

(*b*) As to whether the Commonwealth Parliament could under this placitum, make laws imposing on bankers an obligation to pay to their clerks compensation in the event of injury by accident, see *Australian Steamships Limited* v *Malcolm*, (1914) 19 C L R 298, at p 309; 21 A L R 37, at p 40.

As to whether the Commonwealth Parliament has power, under this placitum, to create a corporation to carry on the business of banking and as to whether such a corporation if created can be made an instrumentality of the Commonwealth Government, see *Huxley* v *Scott*, (1914) 19 C L R 381, at pp. 393, 395, 402; 21 A L R 102, at pp 108, 5, 107.

As to whether this placitum gives the Parliament of the Commonwealth power to create an abstraction and call it a corporation, see *Butterworth* v *Commonwealth Bank of Australia*, (1916) 22 C L R 206; 22 A L R 448.

As to the power of a State legislature to impose taxation upon the property of a Bank within the State and whether such a power is affected by the grant to the Parliament of the Commonwealth of the power contained in this placitum, see *Deakin* v *Webb*, *Lyne* v *Webb*, (1904) 1 C L R 585, at p 611; 10 A.L R 237, at p 242.

As to the power of the Parliament under this placitum to create corporations, see *Jumbunna Coal Mine No Liability* v *Victorian Coal Miners' Association*, (1908) 6 C L R 309, at pp 334, 355; 14 A.L R. 701, at pp 709, 717; *Huddart Parker & Co Pty Ltd* v *Moorehead*, (1909) 8 C L R 330, at p. 362; 15 A.L R 241, at p 252.

As to the power of the Parliament of the Commonwealth to make laws with respect to banking irrespective of whether a Bank was established before or after 1901, see *Ex parte Walsh and Johnson, In re Yates*, (1925) 37 C.L.R. 36, at p 81, 32 A L R. 46, at p 59

(c) Reference to State banking in this placitum cited in support of the view that when the Constitution means that the powers conferred on the Parliament of the Commonwealth shall not be applied to State operations, the Constitution expressly says so *Australian Workers' Union* v *Adelaide Milling Co Ltd*, (1919) 26 C L R 460, at p 471, 25 A L R 243 at p 248, *Amalgamated Society of Engineers* v *Adelaide Steamship Co Ltd*, (1920) 28 C L R 129 at pp 158, 162, 26 A L R 337, at pp 345 347, *Merchant Service Guild of Australasia* v *Commonwealth Steamship Owners Association (No 2)*, (1920) 28 C L R 436, at p. 451, 27 A.L R 161, at p 164

(xiv)[a] Insurance, other than State insurance[b], also State insurance extending beyond the limits of the State concerned :

NOTES OF CASES —(a) As to whether the Commonwealth Parliament could under this placitum make laws imposing on insurers an obligation to pay their locks compensation in the event of injury by accident, see *Australian Steamships Limited* v *Malcolm* (1914) 19 C L R 298 at pp 304, 326, 21 A L R 37, at pp 40, 46

(b) Reference to State insurance in this placitum cited in support of the view that when the Constitution means that the powers conferred on the Parliament of the Commonwealth shall not be applied to State operations, the Constitution expressly says so *Australian Workers Union* v *Adelaide Milling Co Ltd*, (1919) 26 C L R 460 at pp 471 2 25 A L R 243 at p 248, *Amalgamated Society of Engineers* v *Adelaide Steamship Co Ltd* (1920) 28 C L R 129 at pp 158 162 26 A L R 337 at pp 345 347 *Merchant Service Guild of Australasia* v *Commonwealth Steamship Owners Association (No 2)* (1920) 28 C L R 436, at p 451, 27 A L R 161 at p 164

(xv)[a] Weights and measures :

NOTES OF CASES —(a) As to the power of the Commonwealth under this placitum to interfere with the operations of State Governments, see *Attorney General of New South Wales* v *Collector of Customs for New South Wales* (1908) 5 C L R 818 at p 8 5, 14 A L R 316 at p 5 1

As to whether this placitum empowers the Parliament to regulate the domestic affairs of the States see *R* v *Barger Commonwealth* v *McKay*, (1908) 6 C L R. 41 at p 61, 14 A L R 374 at p 379

As to whether this power of the Commonwealth is wider than the United States power to fix the standard of weights and measures, see *Attorney General for New South Wales* v *Brewery Employes Union of New South Wales* (1908) 6 C L R 469, at p 611, 14 A L R 56 , at p 614

(xvi.)[a] Bills of exchange and promissory notes[b] :

NOTES OF CASES (a) As to whether this placitum empowers the Parliament of the Commonwealth to regulate the domestic affairs of the States see *R* v *Barger Commonwealth* v *McKay* (1908) 6 C L R 41, at p 69 14 A L R 374 at p 379

(b) As to whether the meaning of bills of exchange and promissory notes in this placitum differs in any way from the meaning which those words have in 1900 see *Attorney General for New South Wales* v *Brewery Employes Union of New South Wales* (1908) 6 C L R 469 at pp 601 610 14 A L R 566, at pp 609, 612

(xvii.)[a] Bankruptcy and insolvency .

NOTES OF CASES (a) As to whether this placitum empowers the Parliament of the Commonwealth to regulate the domestic affairs of the States see *R* v *Barger Commonwealth* v *McKay* (1908) 6 C L R 41, at p 69 14 A L R 374, at p 379

As to whether the power of the Commonwealth to legislate with respect to bankruptcy and insolvency could be neutralized by the enactment by a State that persons under a specified age should have the capacity to become insolvent, see *Attorney General for New South Wales* v *Brewery Employes' Union of New South Wales*, (1908) 6 C L R 469, at p 585, 14 A L R 566 at p 603

As to the validity of certain provisions of the *Bankruptcy Act* 1924 1928 purporting to give Courts power to delegate certain powers to Registrars, see *Le Mesurier* v *Connor*, (1929) 42 C L R 481, 36 A L R 41 1 A B C 97

Held by the High Court —(1) that s 77 (iii) of the Constitution, considered with this placitum, confers ample power upon the Parliament to bestow upon State courts all powers appropriate to bankruptcy jurisdiction and all authority incidental to the exercise of such powers, including a power enabling such Courts in their bankruptcy jurisdiction to direct and authorize the performance of ministerial acts ; (2) that so much of ss 12 (5) and 23 of the *Bankruptcy Act* 1924 1928 as enables a State Court exercising Federal jurisdiction in bankruptcy to give directions or authority to the Federal Registrars to perform ministerial acts and places upon the Registrars an obligation to conform to such directions and execute such authority, is valid , (3) that the issue of a bankruptcy notice for the purpose of ss 52 (j) and 53 of the *Bankruptcy Act* 1924-1929 is entirely ministerial *Doni* v *George A Bond & Co. Ltd. and Bond's Industries Ltd* (1930) 44 C L R 11 , 36 A L R 208 2 A B C 141

As to the *Bankruptcy Act* 1924 (Commonwealth) passed under this placitum, superseding State Insolvency legislation, see *Ingle* v *Doherty & Co Ltd and Official Receiver*, (1930) 2 A B C 104. See also *Rofe* v *Grant*, 1931 S R N S W 154; 4 A B C 168.

Held by the Federal Court of Bankruptcy that s 155 (2) of the *Bankruptcy Act* 1924-1930 (Commonwealth) in conferring on the Court power to make an order for the administration in bankruptcy of a deceased debtor's estate is not *ultra vires* the power conferred on the Parliament of the Commonwealth by this placitum. *Re Parramore* (1930) 3 A B C 1.

Held by the High Court that s 101 of the *Bankruptcy Act* 1924-1930, in its application to allowances payable to a member of the Legislative Assembly of New South Wales under s 28 of the *Constitution Act* 1902 (N S W) is a valid exercise of the power vested in the Parliament of the Commonwealth by this placitum. *Stuart Robertson* v *Lloyd* (1932) 47 C L R 482; 8 A L R 569; 5 A B C 267.

(xviii.) Copyrights, patents of inventions and designs, and trade marks[a]:

NOTES OF CASES. (a) Held by the High Court (Griffith C J, Barton and O'Connor JJ, Isaacs and Higgins JJ dissenting) that Workers' Trade Marks as dealt with and defined in the *Trade Marks Act* 1905 Part VII are no trade marks within the meaning of this placitum. *Attorney-General of New South Wales* v *Brewery Employés Union of New South Wales*, (1908) 6 C L R 469; 14 A L R 505. Meaning of the term 'trade marks' discussed. *Ibid.*

(xix.) Naturalization[a] and aliens[b]:

NOTES OF CASES. (a) Held by the High Court (Starke J) that s 11 of the *Naturalization Act* 1903-1917 which gives the Governor-General power to confer rights of naturalization is a law relating to naturalization and therefore within the power conferred on the Parliament of the Commonwealth by this placitum. *Meyer* v *Public Service Board* (1930) 44 C L R 4; *Re Application of Irby at Johnson and Walsh In re Laws* (1932) 47 C L R 122; 5 A L R 80 at pp 81.

(b) Held by the High Court that the power to legislate with respect to aliens includes the power to determine the conditions upon which they may be permitted to enter and remain in the country and the conditions under which they may be deported from it. *Robtelmes* v *Brenan*, (1906) 4 C L R 395; 13 A L R 168.

Held by the High Court that the power to legislate for deportation includes power to impose any extra-territorial restraint which is necessary to make the deportation effective. *Robtelmes* v *Brenan*, (1906) 4 C L R 395; 13 A L R 168.

As to whether the provision continued in s 5 of the *War Precautions Act* 1914-1916 as to the deportation of aliens was passed in pursuance of this placitum or by virtue of placitum (vi.) relating to naval and military defence. *Ferrando* v *Deare* (1918) 25 C L R 411 at pp 253, 270, 278; 24 A L R 325 at pp 325, 336, 340.

Per Higgins J. The Parliament could under this placitum pass a law for the expulsion and deportation of aliens. *R* v *Macfarlane; Ex parte O'Flanagan and O'Kelly*, (1923) 32 C L R 518, at p 577; 29 A L R 451 at p 477.

Question as to whether Commonwealth legislation on the subject of aliens could be made to cover the field so as to exclude State legislation entirely, discussed by High Court. *Stock Motor Ploughs Ltd* v *Forsyth*, (1932) 48 C L R 128 at p 147; 38 A L R 408, at p 415.

(xx.)[a] Foreign corporations, and trading or financial corporations formed within the limits of the Commonwealth

NOTES OF CASES. (a) As to whether this placitum empowers the Parliament of the Commonwealth to regulate the domestic affairs of the States, see *Pirrie* v *Burger*, *Commonwealth* v *McKay*, (1908) 6 C L R 41, at p 60; 14 A L R 374, at p 377.

As to the power of the Parliament under this placitum to create corporations, see *Jumbunna Coal Mine No Liability* v *Victorian Coal Miners' Association* (1908) 6 C L R 309, at pp 334, 355; 14 A L R. 701, at pp 709, 717.

Held by the High Court that this placitum does not confer on the Commonwealth Parliament power to create corporations, but the power is limited to legislation as to foreign corporations and trading and financial corporations created by State law. Extent of power conferred by the placitum discussed. *Huddart Parker & Co Pty Ltd* v *Moorehead*, (1909) 8 C L R 330, 15 A L R 241.

Placitum cited by Barton J (dissenting) in support of the view that by the direct implication of this placitum municipal corporations created under a State law are protected from the legislative power of the Commonwealth. *Federated Municipal and Shire Council Employees' Union of Australia* v *Melbourne Corporation* (1919) 26 C L R 508, at p 518, 25 A L R 309, at p 313.

(xxi.) Marriage[a]:

NOTES OF CASES. (a) As to the limitations upon the power of the Commonwealth to legislate with respect to marriage and as to the meaning of the term see *Attorney-General for New South Wales* v *Brewery Employees' Union of New South Wales* (1908) 6 C L R 469 at pp 585, 601, 610, 14 A L R 505, at pp 603, 609, 612.

(xxii.) Divorce and matrimonial causes, and in relation thereto, parental rights[a], and the custody and guardianship of infants[a]:

NOTES OF CASES.—(a) As to the power of the Parliament to define the meaning of the expression "parental rights" and to determine who are "infants" for the purposes of this placitum, see *Attorney-General for New South Wales* v. *Brewery Employés Union of New South Wales*, (1908) 6 C.L.R. 469, at pp. 609, 610, 14 A.L.R. 565, at pp. 609, 612.

(xxiii.) Invalid[a] and old-age pensions:

NOTES OF CASES.—(a) As to whether the Parliament could under this placitum enact a law empowering an official to decide whether a particular applicant for an invalid pension was an invalid or not, see *Ex parte Walsh and Johnson*, *In re Jabez*, (1925) 37 C.L.R. 36, at p. 122, 31 A.L.R. 46, at pp. 74, 75.

(xxiv.) The service and execution throughout the Commonwealth of the civil and criminal process and the judgments of the courts of the States[a].

NOTES OF CASES.—(a) Held by the Supreme Court of Victoria that this placitum does not give the *Parliament of the Commonwealth power to authorize proceedings to be taken under the Imprisonment of Fraudulent Debtors Act* of Victoria upon a judgment obtained in Tasmania and registered in Victoria under the *Service and Execution of Process Act* 1901: *Wanganui* v. *Miller*, (1902) 28 V.L.R. 527, 24 A.L.T. 21, 8 A.L.R. 140. Held also that the proceedings under the *Imprisonment of Fraudulent Debtors Act* is not a proceeding for the execution of a judgment within the meaning of this placitum. *Held*, *per* Barton J., this placitum cannot be relied on to enact a general displacement of State legislation by Federal legislation on the matters mentioned in the placitum, but the powers contained in the placitum are given to the Commonwealth as concurrent powers: *Denton* v. *Denton*, (1918) 25 C.L.R. 291, at p. 298, 24 A.L.R. 1, at p. 4.

Held by the High Court that the power conferred by this placitum extends to the extra-territorial operation of writs of summons issued by the Courts of the States when served, and that it is incidental to the execution of that power that a defendant should be enabled to seek for and obtain from the plaintiff security for the costs of an action instituted by a writ to which extra-territorial operation is so given: *Meddeu* v. *New South Wales Mutual Co. Ltd.*, (1918) 25 C.L.R. 116, 24 A.L.R. 87.

(xxv.) The recognition throughout the Commonwealth of the laws, the public Acts and records, and the judicial proceedings of the States[a]:

NOTES OF CASES.—(a) *Per* Barton J.: The placitum cannot be relied on to enact a general displacement of State legislation by Federal legislation on the matters mentioned in the placitum, but the powers contained in the placitum are given to the Commonwealth as concurrent powers: *Denton* v. *Denton*, (1918) 25 C.L.R. 291, at p. 298, 24 A.L.R. 1, at p. 4.

(xxvi.)[a] The people of any race, other than the aboriginal race in any State, for whom it is deemed necessary to make special laws:

NOTES OF CASES.—(a) As to whether this placitum confers on the Parliament of the Commonwealth power to legislate for the deportation of Pacific Island labourers, see *Robtelmes* v. *Brenan*, (1906) 4 C.L.R. 395, at p. 413, 13 A.L.R. 168, at p. 175.

(xxvii.)[a] Immigration[b] and emigration:

NOTES OF CASES.—(a) As to the power of the Commonwealth under this placitum to interfere with the operations of State Governments, see *Attorney-General of New South Wales* v. *Collector of Customs for New South Wales*, (1908) 5 C.L.R. 818, at pp. 833, 842, 14 A.L.R. 516, at pp. 521, 524.

(b) *Meaning of Immigration.*—As to whether "immigration" extends to the case of Australians who are merely absent from Australia on a visit *animo revertendi*, see *Attorney-General for the Commonwealth* v. *Ah Sheung*, (1906) 4 C.L.R. 949, 12 A.L.R. 132.

Held by the High Court that a person whose permanent home is in Australia, and who therefore is a member of the Australian community is not, on arriving in Australia from abroad, an immigrant in respect of whose entry the Parliament can legislate under this placitum empowering the Parliament to make laws with respect to immigration Meaning of "immigration" discussed. *Potter* v *Minahan*, (1908) 7 C L R 277, 14 A L R 63.

Held by the High Court that where a person born in Australia has left the Commonwealth, the question whether, when he attempts to re-enter the Commonwealth, he is an immigrant within the meaning of the *Immigration Act* 1901-1920 depends on whether he is as a fact coming back to Australia as to his home. *Donohoe* v *Wong Sau*, (1925) 36 C L R 404.

As to the power of the Commonwealth under this placitum to exclude any person, whether an alien or not, see *Ah Yin* v. *Christie*, (1907) 4 C L R 1429, at pp 1431, 1433, 1437, 13 A L R 372, at pp. 373, 375.

Held by the High Court (Knox, *C J*, Isaacs, Rich and Starke, *JJ*, Higgins *J* doubting) that the Parliament has power to legislate for the exclusion of British subjects and visitors *R* v *Macfarlane*, *Ex parte O'Flanagan and O'Kelly*, (1923) 32 C L R 518 29 A L R 353.

As to whether Immigration should or should not be construed in its narrower sense as connoting the idea of intended settlement or residence or as including the entry into Australia of any person who in so entering is not coming home, see *R* v *Macfarlane Ex parte O'Flanagan and O'Kelly*, (1923) 32 C L R 518, at pp 533, 553, 565, 578, 580, 582, 29 A L R 353 at pp 360, 368–374, 377–380.

As to the fixed nature of the meaning of "immigration", see *Attorney-General for New South Wales* v *Brewery Employees Union of New South Wales* (1908) 6 C L R 469, at p 501, 14 A L R 565, at p 571.

Held by the High Court (Isaacs, Powers, Rich and Starke *JJ*, Knox, *C J*, and Gavan Duffy, *J* dissenting) that the Parliament of the Commonwealth has power under this placitum combined with placitum (xxxix) to cast upon a person prosecuted upon a charge of being a prohibited immigrant found within the Commonwealth the burden of proving that he is not an immigrant as well as that he has not evaded an officer and that therefore sub-sections (3) (3A) and (3B) of s 5 of the *Immigration Act* 1901-1925 are valid *Williamson* v *Ah On* (1926) 39 C L R 95, 33 A L R 13.

Held by the High Court that the power of the Parliament to make laws with respect to immigration enables it to impose upon the ship's agent who is authorized on its behalf to perform the duties imposed by laws in force in the port an absolute liability to a penalty upon entry of an immigrant from the vessel *Orient Steam Navigation Co Ltd* v *Gleeson* (1931) 44 C L R 254, 35 A L R 61.

Held by the High Court (Evatt *J* dissenting) that s 8(d) of the *Immigrants Act* 1901-1930 which prohibits the immigration into the Commonwealth of any person declared by the Minister to be in his opinion from immigration receive from the Government of the United Kingdom or any other part of the British Dominions or from any foreign Government through official or diplomatic channels undesirable as an inhabitant of or visitor to the Commonwealth is a law with respect to immigration and is therefore within the legislative power of the Commonwealth Parliament conferred by this placitum *R* v *Carter Ex parte Kisch* (1934) 52 C L R 221 11 A L R 125.

(*See also* cases and remarks under *Deportation—whether valid*.)

Deportation—whether valid As to whether this placitum confers power to legislate for the deportation of Pacific Island labourers see *Rebel* v *Ivanan* (1906) 4 C L R 191 at pp 212, 217–220, 13 A L R 168 at pp 174–177.

Held by the High Court (Knox *C J* Isaacs Rich and Starke *JJ* Higgins *J* doubting) that s 8A of the *Immigration Act* 1901-1920—which empowers the Minister, at any time within three years after the arrival in Australia of a person who was not born in Australia and as to whom the Minister is satisfied that he is one of a class specified in the section to call upon the person to appear before a Board to show cause why he should not be deported from the Commonwealth is a law with respect to immigration and is therefore within the legislative power of the Commonwealth Parliament under this placitum *R* v *Macfarlane Ex parte O'Flanagan and O'Kelly* (1923) 32 C L R 518 29 A L R 353.

Held by the High Court (Knox *C J*, Isaacs Rich and Starke *JJ*, Higgins *J* doubting) that the Parliament has power to legislate for the deportation of British subjects and visitors *R* v *Macfarlane Ex parte O'Flanagan and O'Kelly*, (1923) 32 C L R 518, 29 A L R 353.

Held by the High Court (Knox, *C J* Isaacs Rich and Starke *JJ*, Higgins *J* dissenting) that s 8AA of the *Immigration Act* 1901-1920 which empowers the Minister (after a proclamation of the existence of a serious industrial disturbance has been issued) to call upon any person, not born in Australia, who the Minister is satisfied has been concerned in acts directed to hindering the transport of goods, &c. to appear before a Board to show cause why he should not be deported from the Commonwealth—is a valid exercise of the power conferred upon the Commonwealth Parliament by this placitum *Ex parte Walsh and Johnson, In re Jelley* (1925) 37 C L R 36 32 A L R 46.

Per Knox *C J* Higgins and Starke *JJ* The immigration power does not authorize the Parliament to legislate with respect to persons who having immigrated to Australia have made their permanent homes there and so have become members of the Australian community, and, *per* Knox, *C J*, and Starke *J* (Higgins, *J* dissenting) s 8AA of the *Immigration Act* 1901-1920 upon its proper construction does not apply to such persons *Ibid*.

Per Isaacs and Rich *JJ* (1) The Immigration power authorizes the Commonwealth Parliament to legislate with respect only to persons who have immigrated to Australia since the establishment of the Commonwealth and s 8AA of the *Immigration Act* 1901-1920 upon its proper construction applies to all such persons whether they have or have not made their permanent homes in Australia and to no others, and (2) s 8AA of the *Immigration Act* 1901-1920 is a valid exercise of the powers conferred upon the Commonwealth Parliament by s 51 (i), (xxvii) and (xxxix) and s 52 (ii) of the Constitution, but on its proper construction does not go beyond the limits of the immigration power *Ibid*.

Per Higgins *J* S 8AA of the *Immigration Act* 1901-1920 is not a law with respect to immigration, for it is intended to apply to members of the Australian community Parliament having clearly stated the power which it intended to exercise by the Act—the power as to immigration—it cannot be treated as having exercised some other power It is a fundamental mistake to treat the power to make laws "with respect to immigration" as if it were a power to make laws with respect to immigrants S. 8AA of the *Immigration Act* 1901-1920 on its proper construction was meant to apply to persons who had been immigrants, members of the Australian community, and it is invalid to that end A Federal Act may be retrospective, but an Act under the Constitution as to immigration cannot deal with immigration which took place before the Constitution. *Ibid*.

Dictation test, validity of—As to the validity of the dictation test provided by section 3 (a) of the *Immigration Restriction Act* 1901, see *Chia Gee* v *Martin*, (1905) 3 C L R 649, 12 A L R 425.

(xxviii.) The influx of criminals :

(xxix.)[a] External affairs:

NOTES OF CASES—(a) As to whether the Parliament of the Commonwealth has under this placitum power to legislate generally as to the surrender of fugitive offenders from other parts of the British Dominions see *McKelvey v Meagher*, (1906) 4 C L R 265 at pp 278 9 286, 12 A L R 483, at pp 487, 488 See also *McArthur v Williams*, (1936) 42 A L R 231

As to whether this placitum confers power to legislate for the deportation of Pacific Island labourers, see *Robtelmes v Brenan*, (1906) 4 C L R 395, at p 415, 13 A L R 168 at p 175

As to the power of the Commonwealth under this placitum to interfere with the operations of State Governments, see *Attorney General of New South Wales v Collector of Customs for New South Wales*, (1908) 5 C L R 818 at p 842, 14 A L R 516, at p 524

As to whether the *Treaty of Peace Act* 1919 can be upheld under the power conferred by this placitum, and as to the limits (if any) on the power to legislate as to external affairs see per Higgins *J* in *Roche v Kronheimer*, (1921) 29 C L R 329, at p 388 9 27 A L R 251 at p 253, and per Isaacs *J* in *Victorian Stevedoring and General Contracting Co Pty Ltd and Meakes v Dignan*, (1931) 46 C L R 73 at p 122, 5 A L R 22, at p 40 *Per* Latham *C J* It could have been upheld under the power conferred by this placitum *R v Burgess Ex parte Henry* (judgment delivered 10th November 1936)

As to whether the constitutional power of the Commonwealth to accept the mandate for New Guinea is derived from this placitum see *Jolley v Mamika*, (1933) 49 C L R 242 at pp 250, 281 289 39 A L R 606, at pp 508, 521-4

Held by the High Court that this placitum empowers the Commonwealth to pass laws for the purpose of giving effect to the Convention for the regulation of aerial navigation of 1919 *R v Burgess Ex parte Henry* (judgment delivered 10th November 1936)

As to whether the power given by this placitum is limited to matters which in view concern External Nations or to matters which may properly be the subject of international agreement see *ibid*

Per Latham *C J* this placitum does not give a general power of direct and full legislation in respect of all the subject matters in s 51 and is not limited to a power to make laws with respect only to some external aspect of the other subjects mentioned in s 51 *Ibid*

(xxx.) The relations of the Commonwealth with the islands of the Pacific:

(xxxi)[a] The acquisition of property[b] on just terms[c] from any State or person for any purpose in respect of which the Parliament has power to make laws

NOTES OF CASES (a) As to whether property acquired by the Commonwealth under this placitum is subject to the exclusive legislative power of the Commonwealth see *In re Income Tax Acts* (No 4) *Wilkinson v C of T* (1902) 28 V L R 507 at p 570 8 A L R 188 at p 195 24 A L T 66 at p 68

As to the exemption from State Stamp duties of a memorandum of transfer of land of the Commonwealth under the *Property for Public Purposes Acquisition Act* 1901 passed in pursuance of this placitum see *Commonwealth v New South Wales* (1908) 6 C L R 807 at pp 815 7 See also 1 A L R 241 at pp 542 3 547 8

Held by the High Court (Barton, Higgins, Gavan Duffy and Powers *JJ* Isaacs and Rich *JJ*, dissenting) that when the Commonwealth having acquired land under the powers given in this placitum reconveys the land to the person from whom it acquired it the transaction is exempt from State Stamp duties even though the Commonwealth had agreed that the land was to be sold to a third person *Commonwealth v New South Wales* (1918) 25 C L R 429 24 A L R 3

Held by the High Court (Knox, *C J* Isaacs Gavan Duffy and Starke *JJ* and Evatt that he dissented as to a certain class of land— Higgins, *J*) that the Parliament of the Commonwealth is not empowered under this placitum and placitum (xxxix) to legislate requiring the Registrar of Titles to issue to the Commonwealth a certificate of title to certain classes of lands *Commonwealth v New South Wales*, (1923) 33 C L R 1, 29 A L R 401

Question whether inclusion of this placitum in s 51 indicates that the generality of placitum (xxxv) should be cut down so as to exclude State railways discussed by High Court *Australian Railways Union v Victorian Railways Commissioners*, (1930) 44 C L R 319, 37 A L R 37

(b) As to whether the power conferred by this placitum includes power of eminent domain see *New South Wales v Commonwealth*, (1915) 20 C L R 54 at p 78, 21 A L R 128, at p 133

As to whether this placitum includes power to the Commonwealth to acquire a lease see *R v Registrar of Titles, Vict , Ex parte Commonwealth*, (1915) 20 C L R 379, at pp 394, 399, 21 A L R 433 at pp 440, 442

Held by the High Court (Knox, *C J* Isaacs and Starke *JJ*, and Evatt that he dissented as to the inclusion of royal metals —Higgins *J*) that this placitum empowers the Parliament of the Commonwealth to make laws providing for the acquisition by the Commonwealth of land belonging to the State with all the minerals or metals contained therein *Commonwealth v New South Wales*, (1923) 33 C L R 1, 29 A L R 401

(c) As to whether a provision in s 28 of the *Lands Acquisition Act* 1906—providing that the enhancement in value of other land (adjoining the land taken or severed therefrom) of the person entitled to compensation by reason of the carrying out of the public purpose for which the acquired land was acquired, shall be taken into consideration in valuing as being an acquisition on just terms within the meaning of this placitum, see *In re Smith and the Minister for Home and Territories*, (1920) 28 C L R 513, at p 529

(xxxii.) The control[a] of railways[b] with respect to transport for the naval and military purposes of the Commonwealth

NOTES OF CASES - (a) As to the nature of the control of State railways exercisable by the Commonwealth under this placitum see *Federated Amalgamated &c Association v New South Wales Railway Traffic Employees Association* (1906) 4 C L R 488 at p 545 13 A L R 279, at p 284

See also *Australian Steamships Ltd v Utal ulu*, (1914) 19 C L R 298, at p 320 21 A L R 37, at p 44

(b) Question whether inclusion of this placitum in s 51 indicates that the generality of placitum (xxxv) should be cut down so as to exclude State railways, discussed by High Court *Federated Amalgamated Government Railway and Tramway Service Association v New South Wales Railway Traffic Employees Association*, (1906) 4 C L R 488, at pp 535 6, 13 A L R 273, at pp 280-1, *Australian Railways Union v Victorian Railways Commissioners*, (1930) 44 C L R 319 at pp 347-9, 388-9, 391, 37 A L R 37 at pp 42 3 48-9

Placitum cited by Gavan Duffy and Rich, *JJ* (dissenting) in support of the view that it was inserted in the Constitution when it was feared that the powers conferred by placitum (vi) –naval and military defence might be construed too narrowly *Farey v Burvett*, (1916) 21 C L R 433, at p 464, 22 A L R 201 at p 213

(xxxiii)[a] The acquisition, with the consent of a State, of any railways of the State on terms arranged between the Commonwealth and the State

NOTES OF CASES (a) Question whether inclusion of this placitum in s 51 indicates that the generality of placitum (xxxv) should be cut down so as to exclude State railways discussed by High Court *Federated Amalgamated Government Railway and Tramway Service Association v New South Wales Railway Traffic Employees Association* (1906) 4 C L R 488 at pp 535 6, 13 A L R 273 at pp 280 1 *Australian Railways Union v Victorian Railways Commissioners* (1930) 44 C L R 319, 37 A L R 37

xxxiv[a] Railway construction and extension in any State with the consent of that State[b]:

NOTES OF CASES (a) Question whether inclusion of this placitum in s 51 indicates that the generality of placitum (xxxv) should be cut down so as to exclude State railways discussed by High Court *Federated Amalgamated Government Railway and Tramway Service Association v New South Wales Railway Traffic Employees Association* (1906) 4 C L R 488 at pp 535 6, 13 A L R 273 at pp 280 1 *Australian Railways Union v Victorian Railways Commissioners* (1930) 44 C L R 319, 37 A L R 37

(b) As to the power of a State to bring a suit in the High Court under s 75 against the Commonwealth in respect of the construction of a railway by the Commonwealth in a State without the consent of the State see *Commonwealth v New South Wales* (1923) 32 C L R 200 at p 213, 29 A L R 281 at p 294

(xxxv)[a][b] Conciliation and arbitration[c] for the prevention and settlement of industrial disputes[d] extending beyond the limits of any one State[e]

NOTES OF CASES

N B The notes on this placitum are arranged under the following headings

(a) *Whether placitum authorizes legislation affecting States, State undertakings and State industrial authorities*

(b) *Matters incidental to or arising under placitum generally*

(i) *Power to provide tribunal*

(ii) *Power to make arbitration compulsory*

(iii) *Incorporation and cancellation of associations*

(iv) *Whether awards must operate uniformly in different States*

(v) *The making of awards inconsistent with State laws, awards, &c*

(vi) *The making of retrospective awards*

(vii) *The continuance of an old award until a new award is made*

(viii) *Power to declare a common rule*

(ix) *The settlement of disputes by agreement*

(x) *Power to prohibit lockouts or strikes*

(xi) *Power to bind successors in business*

(xii) *Power to prohibit incitements to commit breaches of Act*

(xiii) *Limits on powers of Court as to matters &c which may be awarded*

(xiv) *Scope of jurisdiction of Court*

(c) *Meaning of words Conciliation and Arbitration*

(d) *Meaning of words Industrial Dispute*

(e) *Meaning of words Extending beyond the limits of any one State*

(a) *Whether placitum authorizes legislation affecting States, State undertakings and State industrial authorities*

Held by the High Court that this placitum does not either expressly or by necessary implication authorize interference by the Commonwealth with State instrumentalities *Federated Amalgamated &c, Association v New South Wales Railway Traffic Employees Association*, (1906) 4 C L R 488, 13 A L R 273 See also *Australian Steamships Ltd v Malcolm*, (1914) 19 C L R 298, at p 320; 21 A L R 57 at p 44

As to whether a municipal corporation which engages in a trading enterprise is subject to this placitum, see *Federated Engineers and Firemen's Association of Australia v Broken Hill Pty Co Ltd*, (1911) 12 C L R 398, at pp 414, 426-8, 443, 451-3, 459 60, 17 A L R 285, at pp 290, 295, 301-2, 304 5, 308, *Federated Engineers and Firemen's Association of Australasia v Broken Hill Pty Co. Ltd* (1913) 16 C L R 245, at pp 261-2, 271, 279, 284, 19 A L R 177, at pp 181, 185, 187, 189

(a) Whether placitum authorises legislation affecting State State undertakings and State industrial authorities—continued

As to whether a body such as the Board of Water Supply and Sewerage which appears from its construction to be in the strictest sense a Department of the State Government is subject to this placitum see *Federated Engine-drivers and Firemen's Association of Australasia* v *Broken Hill Pty Co Ltd*, (1911) 12 C L R 398, at pp 414, 425, 441, 451, 459 60, 17 A L R 85, at pp 296, 291 5 301, 304 5, 308

Sydney Harbour Trust struck out as a respondent to an award on the ground that it is a State instrumentality *Australian Builders' Labourers' Federation* v *Henderson* (1918) 12 C A R 23

As to the power of the Parliament under this placitum to make a law providing for the settlement of industrial disputes in such operations as wheat marketing carried on by a State Government, see *Australian Workers' Union* v *Adelaide Milling Co Ltd* (1919) 26 C L R 160, 25 A L R 213

Held by the High Court (Isaacs, Higgins, Gavan Duffy, Powers and Rich, *JJ* Griffith, *C J*, and Barton, *J*, dissenting) that municipal corporations established under State Laws are not, with regard to the making, maintenance control or lighting of public streets instrumentalities of State government, and, therefore, are not, in respect of such operations, exempt from Commonwealth legislation under this placitum *Federated Municipal and Shire Council Employees' Union of Australia* v *Melbourne Corporation*, (1919) 26 C L R 508, 25 A L R 401

Per Isaacs and Rich, *JJ* A municipality is not exempted except so far as it represents the Crown by reason that it (1) is legally empowered to perform and does perform some function for the Crown, or (2) is lawfully empowered to perform and does perform some function which constitutionally is inherently a Crown function *Ibid*

Per Higgins *J* Even if the Crown and its agents are immune from the Act which is doubtful municipalities are not agents of the Crown so as to share in the immunity *Ibid*

Held by Isaacs, Higgins, Powers and Rich *JJ* (Griffith, *C J*, Barton and Gavan Duffy, *JJ* dissenting) that the Commonwealth Court of Conciliation and Arbitration had authority to determine by award a dispute between an organization of employees registered in connexion with 'municipal and shire councils, municipal trusts and similar industries', and municipal corporations constituted under State laws, such dispute relating to the operations of those municipal corporations which consist of the making, maintenance, control and lighting of public streets *Ibid*

Held by the High Court (Knox *C J* Isaacs, Higgins Rich and Starke *JJ* Gavan Duffy *J*, dissenting) that the Parliament of the Commonwealth has power under this placitum to make laws binding on the States with respect to conciliation and arbitration for the prevention and settlement of industrial disputes extending beyond the limits of one State *Amalgamated Society of Engineers* v *Adelaide Steamship Co Ltd*, (1920) 28 C L R 129, 26 A L R 137

Held by the High Court (Knox *C J* Isaacs, Higgins Rich and Starke, *JJ* Gavan Duffy, *J*, dissenting) that a dispute between an organization of employees and a Minister of the Crown for a State acting under the authority of a statute of that State as an employer, which, if it existed between the organization and a private employer would be an 'industrial dispute' within the meaning of this placitum, is such an 'industrial dispute' *Amalgamated Society of Engineers* v *Adelaide Steamship Co Ltd*, (1920) 28 C L R 129, 26 A L R 137

Held by the High Court that the Sydney Harbour Trust and the Melbourne Harbour Trust Commissioners, the operations of which bodies are carried on under statutes of the respective States, are essentially industrial concerns and are therefore quite amenable under this placitum and the *Commonwealth Conciliation and Arbitration Act Merchant Service Guild of Australasia* v *Commonwealth Steamship Owners' Association (No 2)*, (1920) 28 C L R 446, 27 A L R 161

Held also that in respect of a dispute between an organization consisting of masters officers and engineers of ships and their employers the Colonial Treasurer the Minister of Public Works, and the Chief Secretary of New South Wales who control Departments carry on but not under the authority of any statute, operations which are industrial in their nature and for the purposes of those operations own and use ships upon which members of the organization are employed, the employers are justiciable under this placitum and the *Commonwealth Conciliation and Arbitration Act Ibid*

Per Higgins *J* If there be any restriction upon the power conferred by this placitum in respect of State activities, the restriction should be limited to strictly governmental functions such as the legislative executive and judicial function *Ibid*

Held by the Commonwealth Court of Conciliation and Arbitration that it has jurisdiction to make awards in respect of State Departments or activities or individual employees under State *Federated Carters and Drivers Industrial Union of Australasia* v *Tramways Department of Victoria* (1922) 31 C A R 30 Quære whether the Court has jurisdiction to make an award against the State in respect of persons engaged in industrial work in the administration of ordinary civil functions of the Government of the State *Ibid*

Award made by the Commonwealth Court of Conciliation and Arbitration binding the Sydney Harbour Trust Commissioners *Blacksmiths Society of Australia* v *Sydney Harbour Trust Commissioners* (1922) 16 C A R 90

Held by the Commonwealth Court of Conciliation and Arbitration that it has jurisdiction to make industrial awards and orders as to the payment of wages by the Commonwealth *Health Inspectors' Association of Australia* v *The Minister Councillors and Citizens of the City of Melbourne* (1922) 16 C A R 978

Award made by the Commonwealth Court of Conciliation and Arbitration binding certain States in relation to employment on State vessels and at State Wharves *Merchant Service Guild of Australasia* v *Union Steamship Co Ltd*, (1922) 16 C A R 147 Application by the Court for claims against States discussed *Ibid* See also *Breakfast Creek Land Co* v *Commissioners of Harbours and Metropolitan Tramways Board* (1924) 17 C A R 680 *Commonwealth Society of Corporate Engineers* v *Anthony* (1923) 17 C A R 578 and *Australian Workers' Union* v *State of Victoria* (1922) 18 C A R 6

Application for registration of industrial association of employees in public services and in State undertakings refused and in which the Court held that the association is not an association of employers in any accurate description of the word in relation to industries *New South Wales* v *Australian Public Service Association* (1924) 20 C A R 119

As to the full exercise of an exclusive power (such as the power conferred on the Parliament by this placitum), not being controlled by any implied prohibition even though a State voluntarily borrows such within its ambit see *Purves* v *McFarlane* (1925) 36 C L R 170, at pp 191 3 31 A L R 65, at pp 73

Held by the Commonwealth Court of Conciliation and Arbitration that it has jurisdiction to make an award applicable to printing and or bookbinding done in the Government Printing Office Department of Lands and Registration Central Department New South Wales and also the Sydney Technical College *Printing Industry Employees' Union of Australia* v *Arbuckle Waugh Pty Ltd* (1925) 22 C A R 247

Held by the Commonwealth Court of Conciliation and Arbitration that the High Court having affirmed the jurisdiction of the Commonwealth Court of Conciliation and Arbitration to make a binding award against certain State instrumentalities the latter Court ought not to refuse to exercise that jurisdiction in cases properly within it especially as to do so would be to deprive the King's subjects of their constitutional rights *Australian Builders' Labourers' Federation* v *Bishop* (1926) 24 C A R 10

Held by the High Court that when an award has been made by the Commonwealth Court of Conciliation and Arbitration constituted under this placitum, the Parliament of a State cannot alter the terms of the award or confer or impose on the parties to it rights or obligations which are inconsistent with such terms *Clyde Engineering Co Ltd* v *Cowburn Metters Ltd and Lever Bros Ltd.* v. *Packard*, (1926) 37 C L R 466, 32 A L R 214

Held by the High Court that s 20 of the *Commonwealth Conciliation and Arbitration Act* 1904–1926 – which empowers the Commonwealth Court of Conciliation and Arbitration in certain cases to direct a State industrial authority that is dealing or about to deal with an industrial dispute not to do so—is within the power conferred by this placitum and placitum (xxxix) upon the Parliament of the Commonwealth. *R* v *Commonwealth Court of Conciliation and Arbitration. Ex parte The Engineers, &c. (State) Conciliation Committee*, (1926) 38 C L R 563, 33 A L R 90

Held by the Commonwealth Court of Conciliation and Arbitration that in an interstate dispute in which the question of the salaries to be paid to officers of the Victorian Railways Department (whose salaries are in excess of £600 per annum) is in issue the Court has jurisdiction to make an award fixing the salaries to be paid to those officers notwithstanding that under State law the decision as to the salaries payable to officers whose salaries are in excess of £600 per annum rests with the Government and not with the Railway Commissioners *Australian Railways Union* v *Victorian Railways Commissioners*, (1927) 20 C A R 1013

The State of South Australia pursuant to statutory authority employed as health inspectors certain members of an organization An industrial dispute extending beyond the limits of one State having arisen between the claimant organization and certain employers including the State of South Australia, it was held by the Commonwealth Court of Conciliation and Arbitration that in respect of the employment of members of the claimant association the State was under this placitum subject to the jurisdiction of the Court *Health Inspectors Association of Australia* v *Mayor Aldermen Councillors and Citizens of the City of Greater Brisbane and others* (1928) 26 C A R 413

Held by the High Court that awards made by the Commonwealth Court of Conciliation and Arbitration in respect of disputes to which the Railway Commissioners of the various States had been made parties, were validly made and were binding on the respective Commissioners *Australian Railways Union* v *Victorian Railways Commissioners*, (1930) 44 C L R 319, 37 A L R 37

(b) *Matters incidental to or arising under placitum generally*

(i) *Power to provide tribunal*

Held by the High Court that the *Commonwealth Conciliation and Arbitration Act* is not *ultra vires* the Constitution on the ground that the tribunal for the determination of such disputes is not chosen by the disputants Held also that under the Constitution the only arbitral power which can be conferred upon that Court is a power of judicial determination between the parties to a dispute *R* v *Commonwealth Court of Conciliation and Arbitration Ex parte Whybrow & Co*, (1910) 11 C L R 1, 16 A L R 373.

As to the power of the Parliament under this placitum to create a tribunal having judicial power, which is not a court within s 71 of the Constitution and the Presiding Judge of which is not appointed for life, see *Waterside Workers' Federation of Australasia* v *J W Alexander Ltd*, (1918) 25 C L R 434, 24 A L R 141 (Note) This decision was given prior to the reconstitution of the Commonwealth Court of Conciliation and Arbitration by the appointment of Judges holding life tenure)

Per Higgins J (Powers of the Commonwealth Court of Conciliation and Arbitration) The Government has no power to establish tribunals by executive action *Waterside Workers' Federation* v. *Commonwealth Steam Ship Owners' Association* (1920) 14 C A R 276

(ii) *Power to make arbitration compulsory*

Held by the High Court that the *Commonwealth Conciliation and Arbitration Act* is not *ultra vires* the Constitution on the ground that under the Act the reference of industrial disputes to the Court is compulsory *R* v *Commonwealth Court of Conciliation and Arbitration Ex parte Whybrow & Co*, (1910) 11 C L R 1, 16 A L R 373

(iii) *Incorporation and cancellation of associations*

Held by the High Court that provisions for the registration of associations as organizations (even though of employees in an industry in one State only) and for the incorporation of organizations when registered are valid as being incidental to the power conferred upon the Commonwealth Parliament by this placitum *Jumbunna Coal Mine No Liability* v *Victorian Coal Miners' Association*, (1908) 6 C L R 309 14 A L R 701 See also *Huddart Parker & Co Pty Ltd* v *Moorehead* (1909) 8 C L R. 330, at p 466, 15 A L R 241, at p 253

Held by the High Court that s 60 of the *Commonwealth Conciliation and Arbitration Act* 1904-1921—providing in certain events for the cancellation of the registration of an organization is a valid exercise of the legislative power of the Commonwealth under this placitum and placitum (xxxix) *Australian Commonwealth Shipping Board* v *Federated Seamen's Union of Australasia*, (1921) 29 C L R 442; 31 A L R 313

(iv) *Whether an award must operate uniformly in different States*

Question of power of Court to fix different rates of wages for different States discussed by High Court. *Federated Saw Mill, Timber Yard and General Woodworkers Employees' Association of Australasia* v *James Moore & Son Pty Ltd* (1909) 8 C L R 465 15 A L R 374 See also *Australian Tramway Employes Association* v *Commissioner for Road Transport and Tramways* (N S W) (1935) 53 C L R 90, at p 107 41 A L R 183 at p 191 *Australian Tramway and Motor Omnibus Employees Association* v *Commissioner for Road Transport and Tramways* (N S W) (1936) 56 C L R 470, at p 486, 42 A L R. 105 at p 108

As to whether an award may draw a distinction between State employees and other employees, see last mentioned case

(v) *The making of awards inconsistent with State laws awards, &c*

Question as to the power of the Commonwealth Court of Conciliation and Arbitration to make an award inconsistent with an award of a State Arbitration Court, an industrial agreement made and registered pursuant to a State statute an industrial agreement enforceable under State law, or a determination of a Wages Board empowered by a State law to fix a minimum rate of wages, discussed by High Court *Federated Saw Mill, Timber Yard and General Woodworkers Employees' Association of Australasia* v *James Moore & Son Pty Ltd* (1909) 8 C L R 465 15 A L R 374 (As to this case see *Waterside Workers' Federation of Australia* v *Gilchrist Watt and Sanderson Ltd*, (1924) 34 C L R 482 at p 548, 30 A L R 402, at p 430)

(b) *Matters incidental to or arising under placitum generally* continued

(v) *The making of awards inconsistent with State laws awards &c* continued

Held by the High Court (Griffith, C.J., Barton and O'Connor JJ., Isaacs and Higgins, JJ., dissenting) that the Commonwealth Court of Conciliation and Arbitration has no jurisdiction under this placitum to make an award inconsistent with a State law, and that the determination of a Wages Board empowered by a State statute to fix a minimum rate of wages may be such a law the question whether it is such a law depending upon the terms of the statute *Australian Boot Trade Employees' Federation v Whybrow & Co* (1910) 10 C.L.R. 266, 16 A.L.R. 18) (As to this case see *Waterside Workers' Federation of Australia v Gilchrist, Watt and Sanderson Ltd* (1924) 34 C.L.R. 482 at p. 508, 30 A.L.R. 402 at p. 430)

Held by the High Court that an award of the Commonwealth Court of Conciliation and Arbitration is not inconsistent with a State law if compliance with the award is consistent with obedience to the State law *Australian Boot Trade Employees' Federation v Whybrow & Co* (1910) 10 C.L.R. 266, 16 A.L.R. 18) (But see *Clyde Engineering Co. Ltd v Cowburn Motors Ltd* and *Peter Bros. Ltd v Pickard, infra*, in this note.)

Held by the Commonwealth Court of Conciliation and Arbitration that it will not refrain from entertaining a settled State dispute merely on the ground that a Wages Board determination is in operation in one or more of the States concerned *Federated Engine-drivers and Firemen's Association of Australasia v Broken Hill Pty. Co. Ltd* (1913) 7 C.A.R. 1.

Per Powers, D.P. of the Commonwealth Court of Conciliation and Arbitration. The fixing of Wages and rates for a settled state of the settlement of an interstate dispute any part of an interstate dispute *Manufacturing Grocers Employees' Federation v R. Harper & Co.* (1911) 10 C.A.R. 101 at p. 111.

Held by the Commonwealth Court of Conciliation and Arbitration that unless parties to an industrial dispute agree to accept the finding of a Wages Board as a settlement of any part of an interstate dispute the Court will not recognize a Wages Board decision as a settlement of any part of an interstate dispute *Federated Carters and Drivers' Industrial Union of Australasia v Tuthill* (1917) 11 C.A.R. 856.

Held by the High Court that the Commonwealth Court of Conciliation and Arbitration may by an award fix a minimum rate of wages lower than the minimum rate prescribed by a Wages Board of a State pursuant to a statute of that State for the same class of work *Federated Engine-Drivers and Firemen's Association of Australasia v Illawarra Cleveland and Bulli Coal Co. Ltd.*, (1919) 29 C.L.R. 1, 26 A.L.R. 161.

Held by the Commonwealth Court of Conciliation and Arbitration that in cases where the Court has the minimum rate of a State law or common law granting which could not clash with the right of any party to the award *Federated Engine-Drivers and Firemen's Association of Australasia v Albany Coal Ltd* (1920) 16 C.A.R. 710.

Held by the High Court that where an award has been made by the Commonwealth Court of Conciliation and Arbitration conferring under this placitum the Parliament has not exercised its power to make laws with respect to terms of the award or conferring on the Court the power to make laws which can be assisted by such terms *Clyde Engineering Co. Ltd v Cowburn Motors Ltd* and *Peter Bros. Ltd v Pickard*, (1920) 28 C.L.R. 316, 32 A.L.R. 214.

Held by the High Court (Knox, C.J., Rich, Gavan Duffy, Starke and Starke JJ. Higgins and Powers JJ. dissenting) that the possibility of a valid law of the Commonwealth and a law of the State without disobedience to both is not a test of the invalidity of the State laws *Ibid.*

Per Isaacs, J. A State law is not void and is therefore invalid so far as it is of effect if enforced would be to destroy or vary the adjustment of industrial relations established by the award with respect to the matters formerly in dispute *Ibid.*

Held by the High Court that a determination of a State Wages Board which fixed an industry a higher minimum wage than that fixed by an award made by the Commonwealth Court of Conciliation and Arbitration under this placitum rendered that industry is invalid under s. 109 of the Constitution *H. V. McKay Ltd v Hunt* (1920) 28 C.L.R. 305, 2 A.L.R. 333.

Question as to the extent of the power of the Commonwealth Court of Conciliation and Arbitration to make under s. 304 of the *Commonwealth Conciliation and Arbitration Act* 1904-1921 a declaration as to the invalidity of a State award discussed by that Court *J. H. Corke v Australian Tool Workers' Union* (1929) 28 C.A.R. 36.

Question of inconsistency as between a Commonwealth award providing a complete industrial code for the government of the disputants and a State award discussed by High Court *Stark Motor Ploughs Ltd v Forsyth* (1922) 48 C.L.R. 128 at p. 148, 28 A.L.R. 408 at p. 416.

(vi) *The making of retrospective award*

Held by the High Court (Knox, C.J., Higgins, Gavan Duffy and Starke JJ., Powers J. dissenting) that where no prior award has been made by the Commonwealth Court of Conciliation and Arbitration on the particular subject matter the Court may by an award make provisions in respect of matters which are past at the date of the award in those matters were in issue in the original dispute, and therefore, may order payment in respect of work done after the point of time when it is said the industrial dispute began and before the award is made *Federated Ironworkers' and Firemen's Association of Australasia v Adelaide Chemical and Fertilizer Co. Ltd* (1920) 28 C.L.R. 129, 27 A.L.R. 169.

As to the power of the Commonwealth Court of Conciliation and Arbitration to set aside an award retrospectively, see *Australian Institute of Marine and Power Engineers v Commonwealth Shipowners' Association* (1931) 30 C.A.R. 774.

As to its power to vary an award retrospectively as from the date of its commencement see *Australian Tramway and Motor Omnibus Employees' Association v Commissioner for Road Transport and Tramways (N.S.W.)*, (1935) 54 C.L.R. 470, 42 A.L.R. 105.

(vii) *The continuance of an old award until a new award is made*

Held by the High Court (Knox C.J., Higgins, Gavan Duffy and Starke JJ., Isaacs, Rich and Powers, JJ., dissenting) that the provision in s. 28 (2) of the *Commonwealth Conciliation and Arbitration Act* 1904-1918, that, in the absence of order to the contrary the old order shall continue in force from the date of the expiration of the period therein specified until the new award is made is a valid exercise of the power conferred by the placitum *Waterside Workers' Federation of Australia v Commonwealth Steamship Owners' Association*, (1929) 28 C.L.R. 209, 26 A.L.R. 233.

(5) *Matters incidental to or arising under placitum generally*—continued

(viii) *Power to declare a common rule*

Held by the High Court that the provisions of the Commonwealth Conciliation and Arbitration Act which purport to authorize the Commonwealth Court of Conciliation and Arbitration to declare a common rule in any particular industry and direct that the common rule so declared shall be binding upon the persons engaged in that industry are *ultra vires* the placitum and invalid *Australian Boot Trade Employees' Federation* v. *Whybrow & Co* (1910) 11 C.L.R. 311; 16 A.L.R. 513. *Note.* The High Court had previously held that the provisions empowering the Commonwealth Court of Conciliation and Arbitration to declare a common rule even if *ultra vires* were severable *R.* v. *Commonwealth Court of Conciliation and Arbitration; Ex parte Whybrow & Co* (1910) 11 C.L.R. 1; 16 A.L.R. 373.

Question whether in view of the decisions of the High Court the common rule provisions may no be held to be valid discussed by Commonwealth Court of Conciliation and Arbitration *Accident Underwriters' Association* v. *Australian Insurance Staffs' Federation* (1928) 66 A.R. 968, at p. 972.

Held by the Commonwealth Court of Conciliation and Arbitration that it has jurisdiction to declare an award to be a common rule and to apply to the industry in the Northern Territory *North Australian Workers' Union* v. *Northern Territory Licensed Lessees' Association* (1933) 32 C.A.R. 5.

Discussion by High Court of question whether decision of High Court in *Metal Trades Employers' Association* v. *Amalgamated Engineering Union* that the Commonwealth Court of Conciliation and Arbitration has jurisdiction to make an award for the settlement of an industrial dispute between whom and a union a dispute relating to that subject exists although the employers do not employ any unionists affects the previous decision of the High Court as to the unconstitutionality of the common rule provisions of the *Commonwealth Conciliation and Arbitration Act*: *Metal Trades Employers' Association* v. *Amalgamated Engineering Union* (1920) 28 C.L.R. 387 (per Knox, C.J., at pp. 408); 422, 427; 42 A.L.R. 71, at pp. 78, 83, 85).

(ix) *The settlement of disputes by agreement*

As to whether the Parliament has power as an ancillary to the prevention and settlement of industrial disputes by conciliation and arbitration to make provisions authorizing the parties to come together out of Court and agree to terms of settlement and declare that in every case such agreement shall be binding upon them see *J. C. Williamson Ltd.* v. *Musicians' Union of Australia*, (1917) 23 C.L.R. 630, at pp. 643, 648, 658; 19 A.L.R. 84, at pp. 86, 88, 89.

As to the limits of industrial agreements in respect of which Parliament may legislate in pursuance of this placitum see *United Kingdom Electrical Engineering Association of Australasia* v. *Broken Hill Proprietary Co. Ltd.* (No. 2) (1919) 26 C.L.R. 71; 13 A.L.R. 481.

(x) *To declare prohibited acts or strikes*

Held by the High Court (Barton, C.J., Isaacs, Higgins and Powers, JJ., Griffith, Duffy and Rich, JJ., dissenting) that the prohibition in s. 6 (1) of the *Commonwealth Conciliation and Arbitration Act* 1904–1915 against doing anything in the nature of a "lockout or strike" as defined in s. 4 of that Act is within the legislative power of the Parliament of the Commonwealth as conferred by the placitum and placitum (xxxix) *Stemp* v. *Australian Glass Manufacturers Co. Ltd.* (1917) 23 C.L.R. 236; 24 A.L.R. 273.

Validity of a tax of the *Commonwealth Conciliation and Arbitration Act* 1904–1921 which prohibits the doing of anything in the nature of a lockout or strike discussed, together with question whether action could validly prohibit an employer from a single State dispute from pursuing the remedy of strike *Metropolitan Gas Company* v. *Federated Gas Employees' Industrial Union* (1925) 35 C.L.R. 449; 31 A.R. 117.

(xi) *To call parties before the Court*

Held by the High Court (Isaacs, Higgins and Starke, JJ., Knox, C.J., and Duffy, J., dissenting) that s. 21 (1) of the *Commonwealth Conciliation and Arbitration Act* 1904–1920 as amended by s. 9 of the *Commonwealth Conciliation and Arbitration Act* 1921 so far as to bind not only the parties to an industrial agreement made and filed under s. 21, but also any successor, assignee or transmittee of the business of a party bound by the agreement including any corporation which has acquired or taken over the business of such party is within the power conferred on the Parliament by the placitum and placitum (xxxv) *George Hudson Ltd.* v. *Australian Timber Workers' Union* (1923) 32 C.L.R. 413; 30 A.R. 13.

(xii) *Power to prohibit publication of matter constituting breaches of Act*

Held by the High Court that the provisions as to printing or publishing of documents to commit breaches of the Act contained in s. 109 of the *Commonwealth Conciliation and Arbitration Act* 1904–1928 is within the constitutional powers of the Commonwealth which extend to penalising all instruments to commit contraventions of any law of the Commonwealth validly enacted *Graziers' Association of New South Wales* v. *Labor Daily Ltd.*, (1930) 44 C.L.R. 1.

(xiii) *Limitations of powers of Court as to awards and matters that may be awarded*

As to the limitations on the power of the Commonwealth Court of Conciliation and Arbitration in the settlement of industrial disputes, see *R.* v. *Commonwealth Court of Conciliation and Arbitration; Ex parte Broken Hill Pty. Co. Ltd.*, (1909) 8 C.L.R. 419, at pp. 450–458, 459; 15 A.R. 116, at pp. 419, 423, 427. See also *Amalgamated Engineering Union* v. *Adelaide Dry Dock Ltd.*; *In re Metropolitan Gas Co.* (1928) 41 C.L.R. 402, at p. 421; 34 A.R. 401, at p. 407. (But see *Metal Trades Employers' Association* v. *Amalgamated Engineering Union* (1935) 54 C.L.R. 387; 42 A.R. 44).

Held by the High Court that the President of the Commonwealth Court of Conciliation and Arbitration had no jurisdiction to award a higher rate of wages than was asked for *R.* v. *Commonwealth Court of Conciliation and Arbitration; Ex parte Whybrow & Co.*, (1910) 11 C.L.R. 1; 16 A.R. 373.

As to the power of the Commonwealth Court of Conciliation and Arbitration to give such relief, within the ambit of the claim, as seems to it expedient see *Waterside Workers' Federation of Australia* v. *Gilchrist, Watt and Sanderson Ltd.*, (1924) 34 C.L.R. 482, at pp. 546–7, 549; 30 A.R. 402, at pp. 430, 431.

An industrial dispute arose out of the non-compliance by a number of employers with a demand by an organization of employees made by a log which set out (*inter alia*) certain specified rates of wages which were in fact higher than the minimum rates of wages payable or being paid, under an existing award of the Commonwealth Court of Conciliation and Arbitration, to the members of the organization by the respondents to that award. Held by the High Court that the Commonwealth Court of Conciliation and Arbitration in making a new award had power to prescribe minimum rates of wages lower than those so payable or being paid *Federated Engine-drivers and Firemen's Association of Australasia* v. *Amalgamated*, (1921) 15 C.L.R. 349.

Held by the High Court that an award cannot be made by the Commonwealth Court of Conciliation and Arbitration prescribing a minimum wage lower than any amount in difference in the industrial dispute, and, unless a new industrial dispute extending beyond one State has arisen an award cannot be varied so as to prescribe such a minimum wage *Australian Insurance Staffs' Federation* v. *Atlas Assurance Co. Ltd.*, (1931) 45 C.L.R. 409, 37 A.R. 387.

(b) *Matters incidental to or arising under placitum generally*—continued

(xiii) *Limits on powers of Court as to wages &c., which may be awarded*—continued

In 1927 an employers' organization served a log of demands upon the employees' organization, and prefaced the log by a letter requiring that all members of the employees' organization then or thereafter to be employed by the members of the employers organization should be paid at the rates set out in the log, "or such lower rates as may from time to time to the Court seem just." For one class of work the employers log specified the rate as 15s per hundred. The employees organization served a log on the employers organization and for the same class of work required a rate of 16s per hundred to be paid. The Commonwealth Court of Conciliation and Arbitration fixed 14s per hundred for this class of work. Subsequently that Court reduced the rate to 13s 6d per hundred, a reduction therein of 20 per cent. Held by the High Court (Rich, Starke and Dixon *JJ.*, Evatt and McTiernan *JJ.*, dissenting) that the reduction to an amount below the figure stipulated in the log was not beyond the powers of the Commonwealth Court of Conciliation and Arbitration as the words in the latter covering the employers log "or such lower rates as may from time to time to the Court seem just", prevented the reduced rate being outside the ambit of the dispute between the parties. *Australian Workers Union* v *Graziers' Association of New South Wales* (1932) 47 C.L.R. 12, 38 A.L.R. 214.

In a certain case, after logs had been exchanged respectively by employers and employees the Commonwealth Court of Conciliation and Arbitration made an award reducing the number of hours per week from 48 to 44 and fixed minimum wages slightly less than equal to or slightly more than the minimum rates of wages proposed in the employers log, but in every case considerably less than the minimum rate of wages proposed by the employees' organization, consequently the Full Court of the Commonwealth Court of Conciliation and Arbitration ordered that the award should be varied by paying all wages by ten per cent. Held by the High Court that the order was within the ambit of the dispute and therefore valid notwithstanding that it operated to reduce the rates of wages prescribed by the award below the rates specified by the employers in the logs submitted by them and subsequently coming within the cognizance of the Court. *Federated Millers and Mill Employees Association of Australasia* v *Butcher*, (1932) 47 C.L.R. 246, 38 A.L.R. 234.

(xiv) *Scope of jurisdiction of Court*

Held by the Commonwealth Court of Conciliation and Arbitration that no limitation is placed upon the subject matter of the dispute which may be dealt with by the Court. The business in which the dispute exists may be one in reference to which the Commonwealth Legislature has no power whatever. But whatever the business may be in which the dispute arises when it or the dispute extends beyond the limits of one State the jurisdiction of the Court attaches. *Waterside Workers' Federation of Australasia* v *J. W. Alexander, Ltd.* (1918) 25 C.L.R. 434.

Held by the Commonwealth Court of Conciliation and Arbitration that the Court has no power under the *placitum* to fix hours or conditions in the different states generally or to vary the standard fixing, maintaining or altering the hours or conditions of labour in the different states generally. *Federated Gas Employees Industrial Union* v *Metropolitan Gas Co.* (1918) 25 C.L.R. 138.

Held by the Commonwealth Court of Conciliation and Arbitration that it has jurisdiction to make an interim award pending the final settlement of a dispute. *In re Australian Railways Union; Ex parte Victorian Railways Commissioners* (1920) 27 C.L.R. 43.

(c) *Meaning of terms "Conciliation and Arbitration"*

(c) As to the application of the words "Conciliation and Arbitration" see *Merchant Service Guild of Australasia* v *Newcastle and Hunter River Steamship Co. Ltd.* (No. 1) (1913) 16 C.L.R. 591, 19 A.L.R. 422.

Held by the High Court (Rich, Starke and Dixon *JJ.*) (1) that a law which established a body of persons to settle a dispute by "conciliation and recommendation" means that the parties without any hearing or determination between the disputants by the Commonwealth Conciliation and Arbitration Act 1904–1930 by ss. 31 (sub-sections (8) to (11) inclusive) and 32 was not a law with respect to conciliation and arbitration for the prevention and settlement of industrial disputes and was not authorized by this placitum and that therefore such sections were invalid and (2) that, as all material provisions of s. 34 were invalid as it was impossible from such provisions as were also invalid. *Australian Railways Union* v *Victorian Railways Commissioners* (1930) 44 C.L.R. 319, 7 A.L.R. 37.

Held by Isaacs *C.J.* (dissenting) that the provisions of the Commonwealth Conciliation and Arbitration Act 1904–1930 by which members of Conciliation Committees were directed to endeavour by persuasion and conciliation to bring about a settlement of industrial disputes and by which the parties were authorized to make an award on a plaint brought before the Court by the organization or employees. *Federated Saw Mill, Timber Yard and General Woodworkers Employés Association of Australasia* v *James Moore & Son Pty. Ltd.* (1909) 8 C.L.R. 465, 15 A.L.R. 374.

Held by the High Court that a demand and refusal is not of itself necessarily sufficient to establish the existence of a dispute. Question whether a dispute raised in a formal and complete way is to be taken *prima facie* as genuine and real discussed by High Court. *R* v *Commonwealth Court of Conciliation and Arbitration; Ex parte Whybrow & Co.* (1910) 11 C.L.R. 1, 16 A.L.R. 373.

Held by the High Court that the term "industrial disputes" in this paragraph connotes a real and substantial difference having some element of persistence, and likely, if not adjusted, to endanger the industrial peace of the community. Held also that such a dispute is not created by a mere formal demand and a formal refusal. *R* v *Commonwealth Court of Conciliation and Arbitration and the Merchant Service Guild of Australasia*, (1912) 15 C.L.R. 586, 19 A.L.R. 45.

As to the meaning of the term "industrial disputes" in this placitum, see *Merchant Service Guild of Australasia* v *Newcastle and Hunter River Steamship Co. Ltd.* (No. 1) (1913) 16 C.L.R. 591, 19 A.L.R. 422.

As to the jurisdiction of the Commonwealth Court of Conciliation and Arbitration to arbitrate as well as to conciliate in a case in which the dispute was only "threatened or impending or probable", see *Merchant Service Guild of Australasia* v *Newcastle and Hunter River Steamship Co. Ltd.* (No. 1), (1913) 16 C.L.R. 591, 19 A.L.R. 422.

(d) *Meaning of "industrial disputes"*

(d) Meaning of industrial disputes in this placitum discussed by High Court. *Jumbunna Coal Mine No Liability* v *Victorian Coal Miners' Association* (1908) 6 C.L.R. 309, 14 A.L.R. 701.

Held by the High Court that assuming the existence of all other circumstances which constitute an industrial dispute extending beyond the limits of one State, including a demand by combined and organized employees on their employers, want of preconcert on the part of the employees in making the demand does not under this placitum deprive the Commonwealth Court of Conciliation and Arbitration of jurisdiction to make an award on a plaint brought before the Court by the organization of employees. *Federated Saw Mill, Timber Yard and General Woodworkers Employés Association of Australasia* v *James Moore & Son Pty. Ltd.* (1909) 8 C.L.R. 465, 15 A.L.R. 374.

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As to the meaning of the term "industrial disputes" in this placitum, see *Merchant Service Guild of Australasia* v *Newcastle and Hunter River Steamship Co. Ltd.* (No. 1) (1913) 16 C.L.R. 591, 19 A.L.R. 422.

As to the jurisdiction of the Commonwealth Court of Conciliation and Arbitration to arbitrate as well as to conciliate in a case in which the dispute was only "threatened or impending or probable", see *Merchant Service Guild of Australasia* v *Newcastle and Hunter River Steamship Co. Ltd.* (No. 1), (1913) 16 C.L.R. 591, 19 A.L.R. 422.

(d) Meaning of words "Industrial Disputes"—continued

Held by the High Court that in the case of a demand made by or on behalf of employees on their employers and refused or not conceded, pre-existing dissatisfaction communicated to or known by the employers before the demand is not always a necessary element to constitute an industrial dispute or to make the demand real and genuine *Merchant Service Guild of Australasia v. Newcastle and Hunter River Steamship Co Ltd* (No 2) (1915) 16 C L R 709, 19 A L R 478

Held by the High Court (Isaacs, Higgins, Powers and Rich, *JJ*, Barton, *A C J*, dissenting) that there may be an industrial dispute within the meaning of this placitum upon the question whether employees may wear and display when on duty a badge indicating that they are members of a trade association *Australian Tramway Employees Association v Prahran and Malvern Tramways Trust*, (1913) 17 C L R 680, 19 A L R 573

As to the facts necessary to establish the existence of an industrial dispute, see *Federated Felt Hatting Employees Union of Australasia v Denton Hat Mills Ltd* (1914) 18 C L R 88, 20 A L R 141.

Held by the High Court that the word "dispute" means a real dispute in fact, and is not limited by any artificial criteria *R v Commonwealth Court of Conciliation and Arbitration and Merchant Service Guild of Australasia Ex parte William Holyman & Sons Ltd* (1914) 18 C L R 273, 20 A L R 420

Held by the High Court (Isaacs, Gavan Duffy, Powers and Rich *JJ*) that the existence or non-existence of such a dispute within the meaning of this placitum is to be ascertained by the Court by the ordinary rules of evidence applicable to questions of fact *Ibid*

On the hearing in the Commonwealth Court of Conciliation and Arbitration of a plaint by an organization of employees against a large number of employers, after the evidence was closed a statement signed by several of the employees stating that they had no dispute with their employers and were satisfied with their conditions of labour, was tendered *in evidence* but was rejected as the claimants would not consent to its admission An award was subsequently made which purported to bind the employers of these particular employees Held by the High Court (Griffith, *C J* and Barton, Gavan Duffy, Powers and Rich *JJ* Isaacs, *J*, dissenting), that prohibition should go in respect of the award so far as it related to these employees *Ibid* (But see *Barrowed Common Hill v Australian Theatrical and Amusement Employees Association infra*)

Held by the High Court (Higgins *J*) that in order that an industrial dispute within the meaning of the Constitution may exist it is proved that a dispute exists between an organization of employees and a number of employers who are named as respondent even though it is not proved that the dispute exists between employers who are members of the organization and their respective employers who are respondents *Australian Workers Union v Pastoralist Federal Council* (1917) 23 C L R 22, 24 A L R 8

Held by the Commonwealth Court of Conciliation and Arbitration that Parliament may provide for the registration under the Commonwealth Conciliation and Arbitration Act of a body which does not consist of employers or employees within the meaning of this placitum *Federated Amalgamated Society of Carpenters and Joiners v Commonwealth Steel Trades Employers Association* (1918) 12 C A R 107

Held by the High Court (Higgins *J*) that a dispute between an organization of employees and an employer who employs persons doing the same kind of work as is done by members of the organization although no members of the organization are employed by that employer an industrial dispute may exist, or, if immediately the organization will probably apply to the employer for employment, may be probable. *Australian Timber Workers Union v John Sharp & Sons Ltd*, (1919) 26 C L R 302

Held by the High Court (Isaacs, Higgins, Powers and Rich *JJ* Barton and Gavan Duffy, *JJ*, dissenting) that in order to constitute an industrial dispute within the meaning of this placitum it is not necessary that the undertaking in which the parties of the dispute are engaged should be an industry, a trade or a business carried on for profit *Federated Municipal and Shire Council Employees Union of Australia v Melbourne Corporation* (1919) 26 C L R 508, 25 A L R 30 *Merchant Service Guild of Australasia v Commonwealth Steamship Owners Association* (No) (1920) 28 C L R 456, 27 A L R 161

Meaning of the expression industrial disputes in the placitum discussed by High Court also question whether employees may be parties to an industrial dispute even though they are not manual workers *Federated Municipal and Shire Council Employees Union of Australia v Melbourne Corporation*, (1919) 26 C L R 508, 25 A L R 389

Held by the High Court (Barton Higgins Gavan Duffy and Powers *JJ*) that employees who were cooks, although not manual labourers might be parties to an industrial dispute within the meaning of the placitum *Federated Gas Employees Industrial Union v Metropolitan Gas Co Ltd*, (1919) 27 C L R —, 25 A L R —

Classes of disputes in the clothing trade which may be regarded as industrial disputes within the meaning of this placitum, considered by the High Court *Federated Clothing Trades of the Commonwealth of Australia v Archer* (1919) 27 C L R 20, 25 A L R 230

Held by the Commonwealth Court of Conciliation and Arbitration that a dispute between officers in the administrative branches of the Public Service and their employers is not an "industrial dispute" within the meaning of this placitum such officers not being employed in or in connexion with industry *Commonwealth Public Service Commissioner v Government Service Workers Federation* (1920) 14 C A R. 704

Per Isaacs, Higgins and Rich, *JJ* A dispute between journalists and their employers is an industrial dispute within the meaning of this placitum *Proprietors of the Daily News Ltd v Australian Journalists Association* (1920) 27 C L R 532, at pp 540 546 547

Held by the High Court (Isaacs Higgins Powers Rich and Starke *JJ* Knox *C J* and Gavan Duffy *J* dissenting) that a dispute between employers who carry on the business of banking or the business of insurance and their employees engaged in the business as to the wages to be paid and the conditions of employment to be observed to or with respect to such employees is an industrial dispute within the meaning of this placitum *Australian Insurance Staffs Federation v Accident Underwriters' Association, Bank Officials Association v Bank of Australasia* (1924) 34 C L R 517 30 A L R 122

Held by the Commonwealth Court of Conciliation and Arbitration that an industrial dispute within the meaning of the Constitution is one in which a group of workers in two States unite in making a common demand upon employers in a common industry for rates of pay and substantially similar conditions of labour applicable to the industries in such two or more States *Bank Officials Association v Bank of Australasia* (1924) 10 C A R 272

Held by the Commonwealth Court of Conciliation and Arbitration that in settling an industrial dispute it has jurisdiction to make an award against an employer (*a*) who employs a member of the union (*b*) who is an employer of persons employed in the industry and is one to whom members of the union are likely to apply for employment or (*c*) who discriminates against members of the union in dispute *Australian Theatrical and Amusement Employees Association v Hugh J Ward Theatres Pty Ltd*, (1924) 20 C A R 16

Held by the Commonwealth Court of Conciliation and Arbitration that where a claim has been made and consequently withdrawn the Court has no jurisdiction to make an award in respect of the matter dealt with in the claim *Federated Clothing and Allied Trades Union v Andrews*, (1924) 20 C A R 710

(d) Meaning of words "Industrial Disputes"— continued

Held by the High Court (Isaacs, Powers, Rich and Starke, *JJ.*, Knox, *C.J.*, and Gavan Duffy, *J.*, dissenting) that where a demand as to wages and conditions of labour is made on behalf of its members by an organisation registered under the *Commonwealth Conciliation and Arbitration Act* 1904-1921 of employees in a particular industry upon a number of employers engaged in that industry, the fact that certain of those employers do not employ any members of the organisation or that all the employees of certain of the employers are satisfied with their wages and conditions of labour does not prevent the dispute constituted by the non-compliance with the demand from being an "industrial dispute" within the meaning of this placitum to which those employers are parties in respect of whom a binding award may be made by the Commonwealth Court of Conciliation and Arbitration. *Burwood Cinemas Ltd. v. Australian Theatrical and Amusement Employees' Association* (1923) 33 C.L.R. 528; 31 A.L.R. 282. Case considered in *Metal Trades Employers' Association v. Amalgamated Engineering Union* (1935) 54 C.L.R. 387; 42 A.L.R. 74.

Award varied by Commonwealth Court of Conciliation and Arbitration so as to bind an employer not employing an appreciable number of members of the union, the members who were employed by the employer not having expressed any dissatisfaction with the employment sufficient to generate a dispute. *Australian Builders' Labourers' Federation v. N.S.W. Builders* (1925) 25 C.A.R. 605.

Discussion by Commonwealth Court of Conciliation and Arbitration of question of its jurisdiction to make an award for all classes of work done in an industry and to refuse to make an award on all the claims in a plant whether all the classes of work are or are not at the time the award is made in fact all the respondents in a State but a dispute exists with the consent of all present and future members as to the rates to be paid by respondents engaged in that industry in more than one State. *Australian Federated Union of Locomotive Enginemen v. Victorian Railways Commissioners* (1920) 2 C.A.R. 222 at p. 225.

Held by the Commonwealth Court of Conciliation and Arbitration that where there is a dispute in an industry which extends beyond the limits of one State the Court has jurisdiction when settling that dispute to deal with all matters which properly come within the ambit of the industry. But the industry must be an industry within the meaning of the Constitution. *Quære* as to whether an industry includes a group of industries. *Federated Liquor and Allied Trades Employees' Union of Australasia v. Bolton* (1926) 24 C.A.R. 536.

Per Lukin, *J.* (Commonwealth Court of Conciliation and Arbitration). Once an industrial dispute extends beyond the territory of any one State all the different and interconnected issues that have arisen or may arise in the industrial dispute come within the jurisdiction of the Court for hearing and determination. Once a dispute extends beyond the limits of any one State the jurisdiction of the Court extends to all parts of Australia wherever in fact that dispute exists in the industry. *H. V. McKay Pty. Ltd. v. Federated Moulders (Metal) Union* (1926) 26 C.A.R. 1128 at pp. 1137-8.

Per Lukin, *J.* (Commonwealth Court of Conciliation and Arbitration). The mere fact that a union has served upon employers in different States claims which the employers have not conceded is not of itself sufficient evidence to establish the existence of an interstate dispute. *Federated Liquor and Allied Trades Employees' Union of Australasia v. Australian Club* (1927) 27 C.A.R. 1.

Discussion by the Commonwealth Court of Conciliation and Arbitration of question as to the power of that Court to make an award binding employees present or future on a claimant organization of employees whether the employees were in industrial dispute at the date when notice was served on them of the claim or not, and as to whether the common rule provisions are not valid. *Federal Liquor Trades Association v. Australian Insurance Staffs Federation* (1928) 28 C.A.R. 968.

As to whether employees demanding industrial conditions from employers for themselves can within the term "industrial disputes" as used in this placitum include a condition that if non-unionists are employed their industrial conditions shall be the same see *Amalgamated Engineering Union v. Alderdice Pty. Ltd.; In re Metropolitan Gas Co.* (1928) 41 C.L.R. 402 at p. 417; 34 A.L.R. 401 at pp. 405-6. But see *Metal Trades Employers' Association v. Amalgamated Engineering Union* (1935) 54 C.L.R. 387; 42 A.L.R. 74 *n. fin.* p. 129.

Held by the High Court (Knox, *C.J.*, Gavan Duffy, Rich and Starke, *JJ.*, Isaacs, *J.*, dissenting) that a dispute between the States and the school teachers employed by them is not an "industrial dispute" within the meaning of this placitum the occupation of the teachers not being an industrial occupation. *Federated State School Teachers' Association of Australia v. State of Victoria*, (1929) 41 C.L.R. 569; 35 A.L.R. 129.

Question whether an agricultural society holding exhibitions is engaged in industry and can therefore be party to an industrial dispute discussed by Commonwealth Court of Conciliation and Arbitration. *Australian Theatrical and Amusement Employés' Association v. Royal Show Club* (1929) 27 C.A.R. 940.

Held by the Commonwealth Court of Conciliation and Arbitration that it is within the power of the Court to bind a respondent employer and all other respondent employers by imposing on them duties and obligations to their fellow employers and to the employees in the industry parties to the award. *Australian Textile Workers' Union v. Clothe* (1929) 27 C.A.R. 17.

As to whether an award already made by the Commonwealth Court of Conciliation and Arbitration may be reopened in order to make members of another industrial union bound by the award see *Western Australian Timber Workers' Industrial Union of Workers (S.W. Land Division) v. Western Australian Sawmillers' Association* (1930) 43 C.L.R. 18; 6 A.L.R. 20.

Held by the Commonwealth Court of Conciliation and Arbitration that it has not power to make an award binding employees neither members of a respondent union nor personally parties to a dispute. *H. V. McKay Pty. Ltd. v. Court of Arbitration of Western Australia* (1929) 28 C.A.R. 339.

Held by the High Court (Knox, *C.J.*, Gavan Duffy, Rich, Starke and Dixon, *JJ.*, Isaacs, *J.*, dissenting) that in so far as an award of the Arbitration Court purported to bind an employer in respect of every person employed by him whether a member of the union or not it was *ultra vires*. Question whether power to make such an award could be conferred by legislation under this placitum discussed by High Court. *Amalgamated Clothing and Allied Trades Union of Australia v. D. J. Arnall & Sons; In re American Dry Cleaning Co.*, (1929) 13 C.L.R. 29; 35 A.L.R. 345. Case considered in *Metal Trades Employers' Association v. Amalgamated Engineering Union* (1935) 54 C.L.R. 387; 42 A.L.R. 74.

Held by the High Court (Gavan Duffy, Rich, Starke and Dixon, *JJ.*) that to constitute an industrial dispute there must be disagreement between people or groups of people who stand in some industrial relation upon some matter which affects or arises out of the relationship. Such a disagreement may cause a strike, a lock-out and disturbance and dislocation of industry, but these are the consequences of the industrial dispute and not the industrial dispute itself, which lies in the disagreement. *Caledonian Collieries Ltd. v. Australasian Coal and Shale Employees' Federation (No. 1)*, (1930) 42 C.L.R. 527; 36 A.L.R. 61.

Held by the High Court that the Commonwealth Court of Conciliation and Arbitration has not jurisdiction over an alleged industrial dispute extending beyond the limits of any one State unless

(d) Meaning of words "Industrial Disputes" – continued

It is real and genuine, and that the question whether it is real and genuine, upon proceedings in prohibition, is to be determined by the High Court on its own independent view of the evidence *Caledonian Collieries Ltd v Australasian Coal and Shale Employees' Federation (No 2)*, (1930) 42 C.L.R. 558; 36 A.L.R. 148

Held by the High Court (Gavan Duffy, Rich, Starke and Dixon, *JJ*.) that in order to give the Commonwealth Court of Conciliation and Arbitration jurisdiction, the two-State dispute must exist between the parties antecedently to the award or agreement which composes it, and the dispute must arise out of their disagreement about the manner in which they shall regulate their own industrial relations *Caledonian Collieries Ltd v Australasian Coal and Shale Employees Federation (No 2)*, (1930) 42 C.L.R. 558, 36 A.L.R. 148

Held by the High Court (Rich, Dixon, Evatt and McTiernan *JJ*., Gavan Duffy, *C.J.* and Starke, *J.* dissenting) that when organizations of employees and of employers serve upon one another, and upon employers and employees respectively logs of wages and conditions and the employees' log specifies the amounts they require to be paid, and the employers log the lower amounts they desire to be adopted, as minimum rates of pay, no dispute arises as to minimum rates lower than those specified in the employers' log *Australian Insurance Staffs Federation v Atlas Assurance Co Ltd* (1931) 45 C.L.R. 409, 37 A.L.R. 487

Held by the Conciliation Commissioner that a claim by an organization of employers cannot join individual employers as parties to a dispute so that any award if made would be binding on all employees whether members of the respondent organization of employees or not *Master Butchers Meat and Allied Trades Federation of Australia v Australasian Meat Industry Employees Union* (1931) 30 C.A.R. 512 at p. 513

An award provided that a minor should not be engaged in certain specified occupations except under a contract of apprenticeship framed in accordance with the award. Held by the High Court that as the provision in question was within the ambit of the industrial dispute determined by the award an employer a party to the award might be convicted of a breach of that provision even though the minor engaged by him was not a member of the organization of employees bound by the award *Foy v Chubb's Australian Co Ltd* (1930) 44 C.L.R. 143, 44 A.L.R. 207. Case considered in *Metal Trades Employers Association v Amalgamated Engineering Union* (1925) 36 C.L.R. 387, 42 A.L.R. 74

Held by the High Court (Evatt *J.*) that the Commonwealth Court of Conciliation and Arbitration has jurisdiction to make an award binding present and future members of an employers' organization party to a dispute in respect of members of an employers' organization party to the same dispute employed by them *Amalgamated Engineering Union v Metal Trades Employers Association* (1925) 36 C.L.R. 658, 41 A.L.R. 420

A union of employees in an industry served on employers in that industry in various States a log of demands as to terms of employment requiring that the terms should govern the employment of all persons whether members of the union or not employed in the industry by the respondent. Some of the employers served with the log did not employ any members of the union. The employers did not accede to the union's demands. Held by the High Court (Gavan Duffy *C.J.*, Rich, Evatt and McTiernan, *JJ*., Starke and Dixon *JJ*. dissenting) that as between the union and the employers served with the log there was an industrial dispute for the settlement of which the Commonwealth Court of Conciliation and Arbitration had jurisdiction to make an award binding, not only all employers who did not employ members of the union as well as those who did, as to the terms of employment of all employees including non-unionists *Metal Trades Employers Association v Amalgamated Engineering Union* (1925) 36 C.L.R. 387, 42 A.L.R. 74

Held also that where a union served on employers a log demanding a specified minimum rate of pay to be paid by any respondent to employees and delivered with the log a letter stating that the council of the union requested by authority to grant to them the demand in the log the question of the terms of employment of non-unionists was not within the ambit of the dispute arising out of the employers' refusal of the demands. *Held*

See also *Cobb v City Laundry Co Ltd* (1930) 44 C.L.R. 544; *Australian Timber Workers Union v Stewarts Ltd* (1916) 5 C.L.R. 7.

(e) Meaning of "Extending beyond the limits of any one State"

Held by the Commonwealth Court of Conciliation and Arbitration that where a business extends beyond the limits of one State and a dispute arises in that business and the dispute is taken up by an organization representing that industry the Court has jurisdiction to entertain it whether the disputants are resident in different States or all in one State *Australasian Institute of Marine Engineers v Howard Smith Co Ltd* (1906) 1 C.A.R. 41

A Federal Association of employers in the building trade had branches in Victoria and South Australia both branches being registered under the Commonwealth Conciliation and Arbitration Act though the main body was not so registered. A control existed between the Adelaide branch and the Victorian branch. The latter at the same time submitted to the Victorian branch and the employers to a Wages Board for determination. Held by the Commonwealth Court of Conciliation and Arbitration that the dispute was not one extending beyond the limits of a single State *Re port Hunt In re Stow* (1907) 1 C.A.R. 107

Meaning of extending beyond the limits of any one State discussed by High Court *Jumbunna Coal Mine N.L. Liability v Victorian Coal Miners Association* (1908) 6 C.L.R. 309, 14 A.L.R. 701

Held by the Commonwealth Court of Conciliation and Arbitration that the mere fact that an employer's business extends beyond a State is not sufficient to constitute an interstate dispute. It must be shown that the dispute extends beyond the limits of a State *Marine Cooks Bakers and Butchers Association of Australia v Commonwealth Steamship Owners Association* (1908) 6 C.A.R. 57

Held by the High Court that where the employees engaged in different branches of one industry carried on in different States by a single employer take concerted action in making a common demand on their employer for certain conditions of employment and the employer, understanding that the demand is so made on behalf of all the employees refuses to accede to it there arises an industrial dispute extending beyond the limits of one State within the meaning of this placitum cognizable by the Commonwealth Court of Conciliation and Arbitration *R v Commonwealth Court of Conciliation and Arbitration Ex parte Broken Hill Pty Co Ltd*, (1909) 8 C.L.R. 419, 15 A.L.R. 416

Requisites of an industrial dispute extending beyond the limits of any one State considered by High Court *Federated Saw Mill Timber Yard and General Woodworkers Employees Association of Australasia v James Moore & Son Pty Ltd* (1909) 8 C.L.R. 465, 15 A.L.R. 374

Question as to what constitutes evidence of an industrial dispute extending beyond the limits of any one State considered by High Court *R v Commonwealth Court of Conciliation and Arbitration Ex parte Whybrow & Co*, (1910) 11 C.L.R. 1, 16 A.L.R. 473

Where employees in New South Wales were in dispute with their employers and employees in Victoria and in Queensland subscribed to the same demands as the employees in New South Wales demands

(c) Meaning of 'Extending beyond the limits of any one State'—continued

which they had not made and would not have made except to help the employees in New South Wales by making the dispute a dispute extending beyond the limits of one State. It was held by the Commonwealth Court of Conciliation and Arbitration that the dispute was not one extending beyond the limits of a State: *Federated Engine-drivers' and Firemen's Association of Australasia v Caledonian Coal Co Ltd* (1910) 4 C A R 7.

Held by the High Court that the words "extending beyond the limits of any one State" in this placitum mean extending from one State into another State or other States of the Commonwealth: *Merchant Service Guild of Australasia v Commonwealth Steamship Owners' Association*, (1913) 16 C L R 664, 19 A L R 450.

Held by Gavan Duffy and Rich *JJ* that a dispute extending beyond the limits of any one State within the meaning of this placitum may exist with regard to labour to be performed outside the territorial limits of the Commonwealth, if the disputants reside, the demands and the refusal are made and the dissidence, dissatisfaction and unrest prevail, within the Commonwealth, and the power to prevent and settle such a dispute implies a power to prescribe terms and conditions with respect to such labour: *Merchant Service Guild of Australasia v Commonwealth Steamship Owners' Association* (1913) 6 C L R 664, 19 A L R 450.

Held by the High Court (Isaacs Gavan Duffy Powers and Rich *JJ*, Griffith *C J* and Barton *J* dissenting) that the building trade is an industry in respect of which there may be an industrial dispute extending beyond the limits of any one State within the meaning of this placitum: *R v Commonwealth Court of Conciliation and Arbitration and the Australian Building Trade Labourers' Federation* (1914) 18 C L R 1, 20 A L R 411.

Held by the Commonwealth Court of Conciliation and Arbitration that it can only make an award when there is an industrial dispute or an actual threatened impending or probable industrial dispute extending beyond the limits of one State and must in those matters in the plaint about which there was at the time of the plaint a real dispute in more than one State: *Federated Tanners and Leather Dressers Employees Union of Australia v Jacksons & Co* (1914) 8 C A R 143.

Held by the High Court (Isaacs Gavan Duffy Powers and Rich *JJ*) that the phrase 'industrial disputes extending beyond the limits of any one State' in this placitum is to be construed according to the natural and ordinary meaning of the words as understood at the time of the passing of the Constitution Act: *R v Commonwealth Court of Conciliation and Arbitration and Merchant Service Guild of Australasia ex parte William Holyoak & Sons Ltd* (1914) 18 C L R 37, 20 A L R 424.

Held also that there may be an industrial dispute 'extending beyond the limits of any one State' although there is no inter-State competition in the products or service of the industry, and although the operations and conditions of the industry in one State have no direct action or reaction with respect to the operations or conditions in another State: *Ibid*.

Held also that the words 'extending beyond the limits of any one State' as applied to a dispute mean that the dispute is one 'existing in two or more States' or in other words 'covering Australian territory comprised within two or more States': *Ibid*.

As to the existence of an industrial dispute extending beyond the limits of any one State, when the dispute exists between employers and employees in a tramway undertaking in one State and between employers and employees in a tramway undertaking in another State: see *R v Commonwealth Court of Conciliation and Arbitration and the Australian Tramway Employees' Association* (1914) 19 C L R 43, 20 A L R 479.

Held by the Commonwealth Court of Conciliation and Arbitration that it has jurisdiction to make an award for the prevention of a dispute likely to extend beyond the limits of a State: *Waterside Workers' Federation of Australia v Commonwealth Steamship Owners' Association* (1916) 10 C A R 424.

Held by the High Court (Isaacs Higgins Gavan Duffy Powers and Rich *JJ*, Griffith *C J* and Barton *J*, dissenting) that the whole of s 21AA of the *Commonwealth Conciliation and Arbitration Act* 1904-1915 which enables an application to be made to a Justice of the High Court for a decision on the question whether an industrial dispute or any part thereof exists or is threatened or impending or probable as an industrial dispute extending beyond the limits of any one State and declares that any such decision shall be final is a valid exercise of the legislative power of the Parliament: *Federated Engine-drivers' and Firemen's Association of Australasia v Colonial Sugar Refining Co Ltd* (1916) 22 C L R 101, 22 A L R 325.

Held by the Commonwealth Court of Conciliation and Arbitration that rates of wages and conditions of employment adopted in one State only by the members of an organization cannot be considered as forming part of an interstate dispute: *Australian Mining Employees' Federation of Australasia v Torrington Salter Mining Co N L* (1916) 10 C A R 498. Held further that an organization may include in its plaint claims for different rates in different States, but of such a common joint demand approved by members of the organization in more than one State is necessary to constitute an interstate dispute: *Ibid*.

As to whether the action of members of an organization of employees in two States in striking work in sympathy with employees in another organization who had struck in one of those States, creates an industrial dispute between the organization first referred to and employers of employees members of that organization: see *Metropolitan Coal Co of Sydney Ltd v Australian Coal and Shale Employees' Federation* (1917) 24 C L R 85, 24 A L R 170.

As to whether when an industrial dispute within the meaning of this placitum has been settled in all States but one, an award may be made settling the dispute so far as that State is concerned: see *Federated Engine-drivers and Firemen's Association of Australasia v Adelaide Chemical and Fertilizer Co Ltd*, (1919) 28 C L R 1, 26 A L R 160.

Held by the High Court (Knox *C J* Isaacs Rich and Starke *JJ* Higgins and Gavan Duffy, *JJ*, dissenting) that apart from covering clause 5 of the Commonwealth of Australia Constitution Act the jurisdiction conferred by this placitum extends only to disputes as to the terms and conditions of industrial operations carried on within the territorial limits of the Commonwealth: *Merchant Service Guild of Australasia v Commonwealth Steamship Owners' Association* (No 3) (1920) 28 C L R 495, 27 A L R 214.

Held therefore that the Commonwealth Court of Conciliation and Arbitration has no jurisdiction with regard to a dispute between parties in Australia as to the terms of contracts to be entered into there for employment beyond the territorial limits of Australia upon British ships whose ports of clearance and final ports of destination are not in Australia: *Ibid*.

Question whether s 6A of the *Commonwealth Conciliation and Arbitration Act* 1904-1921—which prohibits the doing of anything in the nature of a lockout or strike could validly prohibit men engaged in a single State dispute from pursuing the remedy of strike discussed by High Court: *Metropolitan Gas Company v Federated Gas Employees' Industrial Union* (1925) 35 C L R 449, 31 A L R 117.

As to whether the Commonwealth Court of Conciliation and Arbitration has jurisdiction to make an award as to persons employed in one State only: see *Australian Federated Union of Locomotive Engineers v Victorian Railway Commissioners* (1925) 22 C A R 703. (*Note*. The particular class of persons employed in one State only were electric tram drivers. A special case stated for the opinion of the High

(c) *Meaning of "Extending beyond the limits of any one State"*—continued

Court as to the power of the Commonwealth Court of Conciliation and Arbitration to make an award in respect of those persons was subsequently withdrawn because in the meantime electric trains had commenced to run in New South Wales. An award was therefore made in respect of electric train drivers. See 22 C.A.R. 888 footnote, and *Australian Federated Union of Locomotive Engrnemen v. Victorian Railway Commissioners* (1926) 23 C.A.R. 222.)

Held by the Commonwealth Court of Conciliation and Arbitration that it has no jurisdiction, at the instance of the union to make an award in respect of a State in which the union has no members. *Manufacturing Grocers Employees Federation of Australia v. Parsons Brand & Co. Pty. Ltd.* (1925) 22 C.A.R. 855.

Held by the High Court (Gavan Duffy, Rich, Starke and Dixon, *JJ.*) that to constitute an industrial dispute there must be disagreement between people or groups of people who stand in some industrial relation upon some matter which affects or arises out of the relationship, and that upon this conception of an industrial dispute it cannot extend beyond the limits of any one State unless in each of two or more States at one time the disagreement exists between people or groups who stand in some industrial relation. *Caledonian Collieries Ltd. v. Australasian Coal and Shale Employees' Federation* (No. 1), (1930) 42 C.L.R. 527, 36 A.L.R. 61.

Held by the High Court (Gavan Duffy, Rich, Starke and Dixon *JJ.*) that the words "extending beyond the limits of any one State," as applied to a dispute, mean that the dispute is one "existing in two or more States", or in other words covering Australian territory comprised within two or more States. *Ibid.*

Held by the Full Court of the Commonwealth Court of Conciliation and Arbitration that where after an award has been made in settlement of an interstate dispute employers in all States but one cease to carry on business, the employees in that State continue to be bound by the award. *Marine Cooks Bakers and Butchers Association of Australasia v. Ballarat Coal Co. Ltd.* (1931) 30 C.A.R. 153.

Held by the Conciliation Commissioner that in the case where an organization of employers having male and female members is in dispute with employers in two States, even though the female members of the union reside in one State only, an interstate dispute exists. *Federated Confectioners Association of Australia v. Australian Paper Pty. Ltd.* (1931) 30 C.A.R. 790.

Held by the Conciliation Commissioner that the absence of interstate competition in a particular industry is not sufficient to prove that an interstate dispute cannot exist in that industry. *Master Butchers Metal and Allied Trades Federation of Australia v. Australasian Meat Industry Employees Union*, (1931) 30 C.A.R. 512 at p. 516.

As to whether in case of an industrial dispute in an industry some branches of which exist in one State only, an award may be made by the Commonwealth Court of Conciliation and Arbitration as to those branches only, see *Printing and Kindred Trades Employers Federation of Australia v. Adams* (1933) 32 C.A.R. 78.

(xxxvi.) Matters in respect of which this Constitution makes provision until the Parliament otherwise provides[a]

GENERAL NOTES.—For matters in respect of which the Parliament has "otherwise provided" see General Notes to various sections of the Constitution; also the Table of Commonwealth legislation, *supra*, pp. xli. to xlvii. particularly p. xxx.

NOTES OF CASES.—(*a*) Held by the High Court that this placitum coupled with ss. 10 and 31, authorizes the enactment of s. 184A of the *Commonwealth Electoral Act* 1902-1911 which requires the signing of electoral articles in newspapers at the time of elections. *Smith v. Oldham* (1912) 15 C.L.R. 355, 18 A.L.R. 445.

Held by the High Court that this placitum coupled with ss. 10 and 31 (xxxix.), authorizes the enactment of s. 14 of the *Commonwealth Electoral (War time) Act* 1917 which provides that, on the day appointed as polling day for an election of the Senate or a general election of the House of Representatives, no referendum or vote of the electors of any State or part of a State shall be taken under the law of a State. *R. v. Brisbane Licensing Court. Ex parte Darvall* (1920) 28 C.L.R. 23, 26 A.L.R. 105.

Held by the High Court that by the enactment of s. 67 of the *Commonwealth Public Service Act* 1922, the Parliament has "otherwise provided" for the retirement of officers within the meaning of this placitum and s. 67 of the Constitution. *Bradshaw v. Commonwealth*, (1925) 36 C.L.R. 585, 31 A.L.R. 441.

(xxxvii.) Matters referred to the Parliament of the Commonwealth by the Parliament or Parliaments of any State or States[1], but so that the law shall extend only to States by whose Parliaments the matter is referred, or which afterwards adopt the law.

GENERAL NOTES.—[1] The following State laws, referring matters to the Parliament of the Commonwealth, had been passed by the Parliaments of the States up to the date of the preparation of this volume—

New South Wales.—*Commonwealth Powers (War) Act* 1915 (No. 65, 1915).

Victoria.—*Commonwealth Powers (Air Navigation) Act* 1920 (No. 3108).
Commonwealth Arrangements Act 1928, Part III. (No. 3654).
Debt Conversion Agreement Act 1931 (No. 2) s. 5 (No. 4009).

Queensland —*The Commonwealth Powers (Air Navigation) Act of* 1921 (12 Geo V, No 39)
The Commonwealth Legislative Power Act 1931 (22 Geo V, No 30)

South Australia —*Commonwealth Powers (Air Navigation) Act* 1921 (No 1489)
Commonwealth Legislative Power Act 1931 (No 2001)

Western Australia —Nil

Tasmania —Commonwealth Powers (Air Navigation) Act 1920 (11 Geo V, No 42)

Copies of those laws are contained in Appendix B, *infra* pp 143 163

Short titles of laws not in force at the date of the preparation of this volume are printed in italics

For further information as to the operation of the foregoing laws and in the case of those in force, their respective dates of commencement see note at end of each law (Appendix I *infra* pp 143 163)

(xxxviii.) The exercise within the Commonwealth, at the request or with the concurrence of the Parliaments of all the States directly concerned, of any power[1] which can at the establishment of this Constitution be exercised only by the Parliament of the United Kingdom or by the Federal Council of Australasia

GENERAL NOTES —(1) No powers had up to the date of the preparation of this volume been exercised in pursuance of this placitum

(xxxix)[a] Matters incidental[b] to the execution of any power vested by this Constitution in the Parliament or in either House thereof, or in the Government of the Commonwealth, or in the Federal Judicature[c], or in any department or officer of the Commonwealth[d]

NOTES OF CASES (a) Reasons for insertion of this placitum discussed by High Court *Huddart Parker & Co, Ltd* v *Moorehead* (1909) 8 C L R 330 at pp 364 5 (see also p 387) 15 A L R 241, at p 253 (see also p 20)

As to its being a fundamental principle of the Constitution that everything necessary to the effective exercise of a power granted by the Constitution is included in the grant of the power, see *Baxter* v *Ah Way* (1909) 8 C L R 626 at p 635 15 A L R 10 at p 10

Held by the High Court (Isaacs Higgins Gavan Duffy Powers and Rich *JJ*) that within the limits as to subject matter prescribed by the Constitution the power of Parliament to make laws is plenary and includes the power within the limits mentioned to repeal or alter laws and that the power conferred by this placitum to make laws with respect to matters incidental to the execution of any of the powers therein mentioned is as plenary as any other of the powers to make laws *R* v *Kidman*, (1915) 20 C L R 425 21 A L R 40

Placitum cited by Isaacs Rich and Starke *JJ* in support of the view that s 75 of the Constitution referring to rights to proceed against the Commonwealth or a State is not directed to mere procedural regulations which affect any right to proceed but to method of procedure those matters being covered by this placitum *Commonwealth* v *New South Wales* (1923) 32 C L R 200, at p 215, 29 A L R 289, at p 295

(b) Held by the High Court that this placitum empowers the enactment of s 37 of the *Judiciary Act* 1903, under which the High Court is authorized in the exercise of its appellate jurisdiction to remit a cause to the Supreme Court for the execution of the judgment of the High Court and there is imposed upon the Supreme Court the duty of executing the judgment of the High Court in the same manner as if that judgment were the judgment of the Supreme Court *Bayne* v *Clarke*, (1908) 5 C L R 497, 14 A L R 103

Held by the High Court that provisions for the registration of associations as organizations (even associations of employees in an industry in one State only) and for the incorporation of organizations when registered are valid as being incidental to the power conferred upon the Commonwealth Parliament by placitum (xxxv) *Jumbunna Coal Mine* v *Victorian Coal Miners Association*, (1908) 6 C L R 309, 14 A L R 701

Held by the High Court that those provisions of the *Commonwealth Conciliation and Arbitration Act* which purport to authorize the Commonwealth Court of Conciliation and Arbitration to declare a common rule in any particular industry and direct that the common rule so declared shall be binding upon the persons engaged in that industry are not incidental to the power contained in s 51 (xxxv), but are *ultra vires* and invalid *Australian Boot Trade Employés' Federation* v *Whybrow & Co*, (1910) 11 C L R 311 16 A L R 71

Held by the High Court that a power to make a law compelling persons to give evidence on matters as to which the Executive Government of the Commonwealth thinks it desirable to collect information to be made use of in exercising any existing power of the Commonwealth Parliament is "incidental" to the execution of that power within this placitum But held also by Griffith *C J* and Barton *J* (Isaacs and Higgins, *JJ*, dissenting) that such an incidental power does not extend to enacting a law compelling persons to give evidence on matters information as to which is relevant only to a possible amendment of the Constitution under s 128 thereof Held therefore that the *Royal Commissions Act* 1902-1912 is within the power of the Commonwealth Parliament to enact but (by Griffith, *C J*, and Barton, *J*, Isaacs and Higgins, *JJ*, dissenting) that it should be construed as intended to

apply to compelling evidence only on matters as to which the Executive Government of the Commonwealth think it desirable to collect information to be made use of in exercising any existing power of the Parliament of the Commonwealth *Colonial Sugar Refining Co Ltd* v *Attorney General for the Commonwealth*, (1912) 15 C L R 182 18 A L R 429 But held by the Privy Council that the *Royal Commissions Act* 1902 1912 is *ultra vires* the Commonwealth Parliament and void so far as it purports to enable a Royal Commission to compel answers generally to questions or to order the production of documents, or otherwise to enforce compliance by the members of the public with its requisition *Attorney General for the Commonwealth* v *Colonial Sugar Refining Co Ltd* 1914 A C 237 17 C L R 644, 20 A L R 22

As to whether a law requiring the signing of electoral articles in newspapers at the time of elections would be incidental if not directly a law relating to elections, see *Smith* v *Oldham*, (1912) 15 C L R 355, at pp 361, 362, 18 A L R 448 at p 451

As to whether a provision, authorizing employers and employees to come together out of Court and agree to terms of settlement of a dispute, is incidental to the prevention and settlement of industrial disputes by conciliation and arbitration see *J C Williamson Ltd* v *Musicians' Union of Australia*, (1912) 15 C L R 636, at p 643, 13 A L R 84 at p 86

As to whether a provision in a land tax law which specifies that a husband or wife to whom land is transferred is to be deemed in certain events to be a joint owner and as such liable to land tax is incidental to such a law see *Waterhouse* v *Deputy Federal Commissioner of Land Tax South Australia*, (1914) 17 C L R 665 at pp 670 675 18 20 A L R 155 at pp 157 159 160

As to whether legislation providing for compensation to seamen employed upon vessels engaged in interstate shipping is incidental to the power of the Commonwealth Parliament to legislate with respect to interstate trade and commerce, including navigation and shipping see *Australian Steamships Limited* v *Malcolm*, (1914) 19 C L R 298 at pp 308 309 312 337 340, 21 A L R 37 at pp 39–41, 51

As to the effect on this placitum upon the power of the Commonwealth to establish a bank, see *Horner* v *Scott*, (1914) 19 C L R 381, at pp 393 396 402, 21 A L R 102 at pp 104 107

Held by the High Court that s 5 of the *Customs Act* 1901 1910 is for the like reason incidental to contracts where a rate of duty is altered is incidental to the exercise of the power to make laws with respect to taxation *Crespin and Sons* v *Cane Cooperative Farmers Ltd* (1916) 21 C L R 209, 22 A L R 86

Held by the High Court (Griffith C J Barton Isaacs Higgins and Powers JJ Gavan Duffy and Rich JJ, dissenting) that the legislative powers of the Commonwealth Parliament conferred by s 51 (xx) and this placitum include a power during the state of war which commenced in 1914 to fix within limits of locality, the highest price which during the continuance of the war may be charged for land *Largey* v *Burrell*, (1916) 21 C L R 4 22 A L R 201 See also *Ferrando* v *Pearce* (1918) 25 C L R 241, at p 276, 24 A L R 325, at p 337

As to the meaning of 'incidental' see per Isaacs J in *Duncan* v *Queensland*, (1916) 22 C L R 556 at pp 624 5 22 A L R 105, at pp 115

Held by the High Court (Barton, I C J Isaacs, Higgins and Powers JJ Gavan Duffy and Rich, JJ, dissentiente) that *the proclamation* in s 6 (1) of the *Commonwealth Conciliation and Arbitration Act* 1904 1915 against doing anything in the nature of a lockout or strike is declared by s 4 of that Act, as within the legislative power of the Parliament of the Commonwealth is conferred by s 51 (xxxv) and this placitum of the Constitution Meaning of matters incidental discussed *Strickland* v *Australian Glass Manufacturers Co Ltd* (1917) 24 C L R 226, 23 A L R 27

Held by the High Court (Barton, Isaacs Gavan Duffy Powers and Rich JJ, Higgins J dissenting) that s 4 of the *Unlawful Instruction Act* 1916 1917 in so far as it makes it an offence during the war 1914–1918 to encourage the destruction or injury of property is a valid exercise of the defence power conferred by placitum (vi) and this placitum *Lamshed* v *Keenan*, (1919) 26 C L R 140, 24 A L R 154

Held by the High Court that the power of a defendant to seek for and obtain security for costs from a plaintiff whose writ issued out of the Court of a State is given extra territorially under the power conferred by placitum (xxxv) of this section, is a matter incidental to the power conferred by this Parliament by that placitum *McGee* v *New South Wales Mutual Co Ltd* (1918) 25 C L R 116, 25 A L R 87

Held by the High Court that s 14 of the *Commonwealth Electoral (War time) Act* 1917 which prohibits the holding and a State law of referendum or vote of the electors of any State or part of a State on the day appointed as polling day for an election of the Senate or a general election of the House of Representatives is a lawful exercise of the power conferred on the Parliament of the Commonwealth by this placitum, coupled with ss 10 and 1 (xxxv) *Re Brisbane Licensing Court Ex parte Daniell* (1920) 28 C L R 23 26 A L R 105

As to s 28 of the *Commonwealth Inscribed Stock Act* 1911 1918—which make the interest derived from Commonwealth Stock or Treasury Bonds exempt from income tax under any law of the Commonwealth or a State unless the interest is declared by the Act to be so liable being held invalid as to the power of the Commonwealth to make laws with respect to the borrowing of money see *Commonwealth* v *Queensland* (1920) 29 C L R 1 27 A L R 75

Held by the High Court (Knox C J, Gavan Duffy Powers Rich and Starke JJ, Higgins, J dissenting) that this placitum does not extend the power to confer original jurisdiction on the High Court contained in s 76 of the Constitution *In re the Judiciary and Navigation Acts* (1921) 29 C L R 257, at pp 265 266, 275, 27 A L R 193, at pp 194, 196 198

Held by the High Court (Isaacs Higgins and Starke, JJ, Knox C J and Duffy J, dissenting) that s 24 (1) of the *Commonwealth Conciliation and Arbitration Act* 1904 1920 as amended by s 3 of the *Commonwealth Conciliation and Arbitration Act* 1921 so as to bind not only the parties to an industrial agreement made and filed under s 24 but also any successor assignee or transmittee of the business of a party bound by the agreement in binding any corporation which has acquired or taken over the business of such party is within the power conferred on the Parliament by placitum (xxxv) and this placitum *George Hudson Ltd* v *Australian Timber Workers Union* (1923) 32 C L R 413, 30 A L R 13

As to the principle applicable in determining whether matters are "incidental" see *George Hudson Ltd* v *Australian Timber Workers Union*, (1923) 32 C L R 413, at pp 425 4, 450–2, 30 A L R 13, at pp 17, 28

Held by the High Court (Knox C J, Isaacs, Gavan Duffy and Starke JJ, and—save that he dissented as to a certain class of land Higgins, J) that the Parliament of the Commonwealth is not empowered under placitum (xxxv) and this placitum to legislate requiring the Registrar of Titles to issue to the Commonwealth a certificate of title to certain classes of lands *Commonwealth* v *New South Wales*, (1923) 33 C L R 1 29 A L R 401

As to the procedure and practice to be observed in relation to Federal jurisdiction being incidental to the powers of the Federal Judicature and so within the power conferred upon the Parliament by this placitum see *Commonwealth* v *Limerick Steamship Co Ltd* and *Kidman*, (1924) 35 C L R 69 at pp 105 115, 31 A L R 103 at pp 164 168 Special leave to appeal from the decision of the High Court in the Case of *Commonwealth* v *Kidman* refused by the Privy Council *Kidman* v *Commonwealth* (1925) 32 A.L R. 1

Held by the High Court that s. 84 of the *Judiciary Act* 1903-1920, which gives the plaintiff the right to obtain discovery of documents from, and to administer interrogatories to, the defendant, applies where the plaintiff is a resident of one State and the defendant is a State other than that in which the plaintiff resides, and the section in question is "incidental" within the meaning of this placitum *Griffin* v *South Australia*, (1924) 35 C.L.R. 200, 31 A.L.R. 81.

Held by the High Court that this placitum, coupled with s. 77 (ii), is authority for the enactment of s. 40A of the *Judiciary Act* 1904-1920, under which cases pending in the Supreme Court of a State, and involving questions as to the limits *inter se* of the constitutional powers of the Commonwealth and one or more States, or as to the limits *inter se* of the constitutional powers of two or more States, are removed to the High Court *Pirrie* v *McFarlane* (1925) 36 C.L.R. 170, 31 A.L.R. 365.

Held by the High Court that s. 99 of the *Commonwealth Conciliation and Arbitration Act* 1904-1921 providing in certain events for the cancellation of the registration of an organization is a valid exercise of the legislative power of the Commonwealth under placitum (xxxv) and this placitum *Australian Commonwealth Shipping Board* v *Federated Seamen's Union of Australia* (1925) 36 C.L.R. 442, 31 A.L.R. 352.

As to whether this placitum either alone or read with s. 61 supports s. 38A of the *Immigration Act* 1901-1920 which empowers the Minister in certain event to refer to a Board the question whether certain persons not born in Australia should be deported from the Commonwealth, see *Ex parte Walsh and Johnson*; *In re Yates*, (1925) 37 C.L.R. 36 at pp. 70-1, 91-98, 108-111, 117-118, 122, 128-9, 32 A.L.R. 46, at pp. 54-5, 67-68, 69-71, 74-81.

As to whether the validity of ss. 38A and 40A of the *Judiciary Act* 1903-1920 is supported by this placitum, see *Commonwealth* v. *Australasian Temperance and General Mutual Life Assurance Society Ltd.* (1920) 27 C.L.R. 323, at p. 420, [1920] V.L.R. 431, at p. 455; 42 A.L.R. 161 at p. 180.

As to the effect of this placitum in enlarging the power of the Parliament to make laws with respect to taxation, see *Federal Commissioner of Taxation* v. *Munro*, (1926) 38 C.L.R. 153, at p. 200, 2 A.L.R. 919, at p. 937.

Held by the High Court that s. 20 of the *Commonwealth Conciliation and Arbitration Act* 1904-1926 which empowers the Commonwealth Court of Conciliation and Arbitration in certain cases to direct a State industrial authority which is dealing or about to deal with an industrial dispute not to do so—is within the power conferred by placitum (xxxv) and this placitum upon the Parliament of the Commonwealth. In re *Commonwealth Court of Conciliation and Arbitration*; *Ex parte The Tramways Case (State) Conciliation Committee*, (1914) 18 C.L.R. 54, 20 A.L.R. 90.

As to whether this power coupled with the power in this placitum (xxxix) authorizes the establishment of businesses for the purposes of trade and wholly unconnected with any purpose of naval defence, see *Commonwealth* v. *National Co-operative Commonwealth Shipping Board* (1926) 40 C.L.R. 1 at p. 9, 33 A.L.R. 61 at p. 64.

Held by the High Court (Isaacs, Powers, Rich and Starke JJ., Knox C.J. and Gavan Duffy, J., dissenting) that the Parliament of the Commonwealth has power under placitum (xxxix) combined with this placitum, to act upon a person prosecuted upon a charge of being a prohibited immigrant found within the Commonwealth the burden of proving that he is not an immigrant as well as that he has not evaded an officer, and that therefore sub-sections (3), (4) and (5) of s. 5 of the *Immigration Act* 1901-1925 are valid *Williamson* v. *Ah On* (1926) 39 C.L.R. 95, 33 A.L.R. 13.

Held by the High Court (Knox C.J., Rich and Dixon JJ., Isaacs and Starke JJ., dissenting) that although this placitum confers power upon the Parliament to make laws with respect to matters which affect or arise in the execution of any power vested by the Constitution in the Federal Judicature, it does not thereby withdraw from the jurisdiction of a State Court which is invested with Federal jurisdiction or of the organization through which that power is and jurisdiction are exercised. *Le Mesurier* v. *Connor* (1929) 42 C.L.R. 481, 6 A.L.J.R. 41, [1929] A.C. 179.

Held by the High Court that the provisions contained in s. 8(2) of the *Commonwealth Conciliation and Arbitration Act* 1904-1925 as to printing or publishing in documents to commit breaches of the Act is within the constitutional powers of the Commonwealth which extend to penalizing all incitements to commit contravention of any law of the Commonwealth validly enacted. *Crowley Association of New South Wales* v. *Labor Daily Ltd.* (1930) 44 C.L.R. 1.

As to whether Part II. of the *Financial Agreements Enforcement Act* 1932 is within the power derived by the Parliament from this placitum see *New South Wales* v. *Commonwealth* (No. 1) (1932) 46 C.L.R. 155 at pp. 173, 174, 176, 177, 180-181, 190-192, 205-210, 211-221, 224-226, 229-230, 38 A.L.R. 345 at pp. 348-351, 360-362, 364-372.

As to whether this placitum either alone or read with s. 61 support the provisions contained in s. 30A of the *Crimes Act* 1914-1926 as to the prohibition of associations which by their constitutions or propaganda advocate or encourage the overthrow by the Constitution of the Commonwealth by revolution or of the established government of the Commonwealth by force or violence see *R* v. *Bush*; *Ex parte Devanny* (1932) 48 C.L.R. 487 at pp. 506, 507.

As to whether the constitutional power of the Commonwealth to accept the mandate for New Guinea is derived from this placitum, see *Jolley* v. *Mamun* (1922) 30 C.L.R. [illegible] at p. 250, 33 A.L.R. 506, at p. 508.

As to whether this placitum in combination with s. 77 (iii) empowers the Parliament to enact new remedies, or merely to give State Courts a federal authority to administer existing remedies, see *Williams* v. *R.* (No. 2), (1934) 50 C.L.R. 551, at pp. 558-9, 40 A.L.R. 314 at p. 316.

Placitum relied upon by Rich J. in support of the view that the manufacture of the Commonwealth Clothing Factory established under s. 64 of the Defence Act of uniforms for State officers and for employees in various public utilities and institutions in the State and for some private persons is incidental to the defence power. *Attorney-General for Victoria* v. *Commonwealth* (1934) 52 C.L.R. 533, at pp. 562-3, 41 A.L.R. 248 at p. 252.

As to whether, if s. 67 (1) of the *Income Tax (Management) Act* 1924-1934 "which imposes an additional tax or a minimum sum of £1 in effect penalizes an officer for doing what is otherwise the only means of the judicial power is incidental to the legislative power with respect to taxation see *Jolley* v. *Federal Commissioner of Taxation* (1935) 52 C.L.R. 206 at p. 211, 41 A.L.R. 211 at pp. 212-3.

As to whether the *Dried Fruits Export Control Act* 1924-1935 (Commonwealth) depends on this placitum, see *Crowe* v. *Commonwealth* (1935) 51 C.L.R. 69 at pp. 82-3, 91-96, 11 A.L.R. 44, at pp. 447, 450-452.

(c) As to whether, within the meaning of this placitum, State Courts invested with Federal jurisdiction form part of the "Federal Judicature", and their jurisdiction is a power "vested by the Constitution", see *Le Mesurier* v. *Connor* (1929) 42 C.L.R. 481, 36 A.L.R. 41, [1929] A.C. 179.

(d) As to the meaning of the expression "Officer of the Commonwealth" in this placitum, see **R. v. *Murray and Cormie*. *Ex parte Commonwealth*, (1916) 22 C.L.R. 437, at pp. 451, 471, 22 A.L.R. 413, at pp. 419, 426.**

Exclusive powers of the Parliament.

52[a]. The Parliament shall, subject to this Constitution[b], have exclusive[c] power to make laws for the peace, order, and good government[d] of the Commonwealth with respect to[e]—

NOTES OF CASES (a) As to whether matters of legislation included in this section and in s. 51 are matters "within the powers of the Parliament of the Commonwealth" within the meaning of s. 108 of the Constitution, see *Municipal Council of Sydney* v *Commonwealth*, (1904) 1 C.L.R. 208, at p. 232, 10 A.L.R. (C.N.) 29.

Scheme of this section and s. 51 in conferring on the Commonwealth certain definite and specified powers, and leaving the residue to the States, compared with corresponding sections of the Constitution of the United States *Deakin* v *Webb*, *Lane* v *Webb* (1904) 1 C.L.R. 585, at p. 605, 10 A.L.R. 237, at p. 240.

(b) Words "subject to this Constitution" relied on by Higgins, *J.*, in support of the view that s. 64 preserves the existing and accruing rights of officers of transferred Departments notwithstanding the provisions of placitum (ii) of this section *Le Leu* v *Commonwealth*, (1921) 29 C.L.R. 305, at p. 314, 27 A.L.R. 242 at p. 246.

See also notes on same words in s. 51 *supra* p. 21.

(c) As to whether the exclusive power contained in this placitum has the effect of exempting the Commonwealth from State taxation, see *Municipal Council of Sydney* v *Commonwealth*, (1904) 1 C.L.R. 208, at p. 234, 10 A.L.R. (C.N.) 29.

Held by *Isaacs, J.* that the word "exclusive" in this section means simply exclusive of State Parliaments exclusive as opposed to concurrent *Volt Trust & Co. Ltd.* v *Barkley*, (1925) 36 C.L.R. 20 at p. 29, 31 A.L.R. 256 at p. 260.

Maxim *expressio unius est exclusio alterius* applied by Higgins, *J.*, in support of the view that the only exclusive powers of the Commonwealth are those expressed or declared to be exclusive *Roughley* v. *New South Wales ex parte Beatty*, (1928) 41 C.L.R. 162, at p. 198, 35 A.L.R. 1, at p. 13.

(d) See notes contained in footnote (c) *supra* p. 21.

(e) See note contained in note (d) commencing at foot of p. 21 *supra*.

(i.) The seat of government of the Commonwealth[a], and all places acquired by the Commonwealth for public purposes[b]:

NOTES OF CASES (a) As to whether the Legislature is empowered to invest the High Court with original jurisdiction in respect of the territory for the Seat of Government, see *Federal Capital Commission* v *Laristan Building and Investment Co. Pty. Ltd.*, (1929) 42 C.L.R. 582.

(b) Question whether on the acquisition of any place by the Commonwealth for public purposes the place ceases to be within the jurisdiction of the Courts of the States discussed by the New South Wales Supreme Court in *Parnell* v *Limond* (1901) 1 S.R. (N.S.W.) 1.

Question whether on the acquisition of any place by the Commonwealth the place becomes subject to the exclusive legislative power of the Commonwealth so as to exempt public servants employed by the Commonwealth at that place from taxation by the Income Tax Law of the State in which the place is situated, discussed by Full Court of the Supreme Court of Victoria *In re Income Tax Acts (No. 4) Wollaston's Case* (1902) 28 V.L.R. 57 at p. 70; 8 A.L.R. 2; 8 A.L.R. 188 at pp. 192, 198; 24 V.L.T. 63 at pp. 66, 72.

As to the effect of the exclusive power conferred on the Parliament by this placitum with respect to places acquired by the Commonwealth for public purposes, see *Commonwealth* v *New South Wales*, (1923) 33 C.L.R. 1 at pp. 45, 46, 60, 29 A.L.R. 401 at pp. 414, 416, 421.

(ii.) Matters relating to any department of the public service[a] the control of which is by this Constitution transferred to the Executive Government of the Commonwealth[b]:

NOTES OF CASES (a) As to whether this placitum either alone or read with s. 61, supports s. 8AA of the *Immigration Act* 1901-1920 which empowers the Minister in certain events to refer to a Board the question whether certain persons not born in Australia should be deported from the Commonwealth—see *Ex parte Walsh and Johnson In re Yates*, (1925) 37 C.L.R. 36 at pp. 61, 70, 81, 94, 108, 127, 133, 136, 32 A.L.R. 46, at pp. 51, 54, 58, 63, 64, 76, 79, 80.

(b) As to whether on the transfer of a Department to the Commonwealth, the official abiding place of the officers of that Department is the office of the Commonwealth so that the officers are in pursuance of this placitum within the exclusive legislative power of the Commonwealth so as to be exempt from the Income Tax Law of the State in which the place is situated see *In re Income Tax Acts (No. 4), Wollaston's Case*, (1902) 28 V.L.R. 357, 8 A.L.R. 188 at pp. 192-3, 198, 24 A.L.T. 63, at pp. 66-7, 72.

Held by the High Court that so far as the Postal Department is concerned, the provisions of the Audit Act as to collection and payment of moneys fall within the words of this placitum *D'Emden* v. *Pedder*, (1904) 1 C.L.R. 91, at p. 109, 10 A.L.R. (C.N.) 30.

Held by the High Court that this placitum renders it impossible to regard section 60 of the *Commonwealth Public Service Act* 1902 which is a re-enactment of the provisions of s. 84 of the Constitution as preventing the application to transferred officers of the provisions of the *Commonwealth Public Service Act* 1902 as to the classification or grading of officers and the determination of their salary limits *Cousins* v *Commonwealth*, (1906) 3 C.L.R. 529; 12 A.L.R. 175.

As to whether the competency of the Parliaments of the States to enact general penal statutes is abridged by the power, conferred upon the Parliament of the Commonwealth by the Constitution of creating and punishing offences relating to departments the control of which is by the Constitution transferred to the Executive Government of the Commonwealth see *R v M'Donald* (1906) 8 W A L R 149

Held by the High Court that, in view of this placitum and ss. 86 and 90, the *Customs Act* 1901 was validly enacted and applies to goods imported by the Government of a State as well as to those imported by private persons *R v Sutton* (1908) 5 C L R 789 at pp. 797, 803, 14 A L R 505 at pp. 508, 510

Held by the High Court (Barton *J.*) that the *Customs Act* 1901 was passed in pursuance of the power conferred by this placitum as well as in pursuance of placita (i) and (iii) of s. 51 *Lyons v Smart* (1908) 6 C L R 143 at p. 154, 14 A L R 328 at p. 332

Placitum cited by Isaacs, Powers and Rich *JJ.* in support of the view that the defence power is exclusively assigned to the Commonwealth *Joseph v Colonial Treasurer* (N S W) (1918) 25 C L R 32, at p. 46, (*see* also p. 51) 24 A L R 185 at pp. 190 1 (see also p. 193)

Placitum cited by Higgins *J.* as a sufficient authority for upholding so much of the decision of the High Court in the case of *D Emden v Pedder* (1 C L R 91) as was based on the ground that the State law was interfering with the Commonwealth activities over which the Commonwealth Parliament had exclusive power *Amalgamated Society of Engineers v Adelaide Steamship Co Ltd* (1920) 28 C L R 129 at pp. 167 8, 26 A L R 337 at p. 349

Held by Higgins *J.* that, notwithstanding the provisions of this placitum, the existing and accruing rights of officers of transferred Departments are preserved by s. 84 as this placitum is subject to this Constitution *Le Leu v Commonwealth* (1921) 29 C L R 305 at p. 314, 7 A L R 214 at p. 216

As to whether s. 85 (iv) of the Constitution operates as a limitation of the powers of the Commonwealth Parliament conferred by this placitum and by s. 51 see *Eastern Extension Australasia and China Telegraph Co Ltd v Federal Commissioner of Taxation* (1924) 34 C L R 426 at p. 451, 30 A L R 144 at p. 152

As to whether this section operates to excuse a defence officer in the exercise of his duty from the obligation to obtain a licence under the Motor Car Act of a State in order that he may drive a motor car see *Perrie v Mellarlane* (1925) 36 C L R 170, 31 A L R 81

Placitum cited by Isaacs *J.* (dissenting) in support of the view that the general power of the Commonwealth Parliament to make laws with respect to defence *Perrie v Mellarlane* (1925) 36 C L R 170 at pp. 185, 192, 199, 31 A L R 86, at pp. 471, 473, 476

Placitum cited by Isaacs *J.* (dissenting) in support of the view that an interpretation of s. 112 as giving power to the State to exclude goods altogether would nullify this placitum as to Customs and Excise when read with ss. 69 and 90 *Ex parte Nelson (No. 1)* (1928) 42 C L R 209 at p. 240, 45 C L R 21, at p. 51

As to the effect of s. 84 of the Constitution in limiting the power of the Commonwealth to legislate under this placitum with respect to matters relating to transferred Departments see *Lamberton v Commonwealth*, (1933) 49 C L R 182 at pp. 184, 187, 4 A L R 28 at pp. 284, 285

As to whether this placitum prevents the States from granting to officers and consequently to their transfer to the Commonwealth Service additional pension rights, see *Lamberton v Commonwealth* (1933) 49 C L R 182 at pp. 191, 192, 4 A L R 28 at pp. 286–7

As to whether this placitum gives power to the Parliament to legislate with respect to the subject matter with which the transferred Departments deal see *Lamb v Taylor Ex parte Wallman* (1935) 54 C L R. 262 at p. 275, 42 A L R 45, at p. 49

(iii.) Other matters declared by this Constitution to be within the exclusive power of the Parliament

Powers of the Houses in respect of legislation

53 [a] Proposed laws appropriating revenue or moneys[b], or imposing taxation[c], shall not originate in the Senate But a proposed law shall not be taken to appropriate revenue or moneys, or to impose taxation, by reason only of its containing provisions for the imposition or appropriation of fines or other pecuniary penalties, or for the demand or payment or appropriation of fees for licences[d], or fees for services under the proposed law

The Senate may not amend proposed laws imposing taxation, or proposed laws appropriating revenue or moneys for the ordinary annual services of the Government

The Senate may not amend any proposed law so as to increase any proposed charge or burden on the people

The Senate may at any stage return to the House of Representatives any proposed law which the Senate may not amend, requesting, by message, the omission or amendment of any items or provisions therein. And the House of Representatives may, if it thinks fit, make any of such omissions or amendments, with or without modifications.

Except as provided in this section, the Senate shall have equal power with the House of Representatives in respect of all proposed laws.

NOTES OF CASES (a) Meaning of secs 53 and 55 discussed by the Full Court of the Supreme Court of Victoria *Stephens v Abrahams* (No 2) (1903) 29 V L R 229, 9 A L R 89, 24 A L T 216

Section cited by Barton J as an instance of the generic term "taxation" including duties of customs and duties of excise whereas in s 55 the generic term "taxation" and the specific terms "duties of customs" and "duties of excise" are used *Attorney-General of New South Wales v Collector of Customs for New South Wales* (1908) 5 C L R 818 at p 828, 14 A L R 516 at p 523

Section cited by Isaacs J as showing the object and effect of the first paragraph of s. 55 *G. G Crespin & Son v Colac Cooperative Farmers Ltd*, (1916) 21 C L R 205 at p 217; 22 A L R 86, at p 90

As to the effect of a breach of the provisions of this section on the validity of an Act, see *Osborne v Commonwealth* (1911) 12 C L R 321, at pp 336, 351–3, 355–6, 365, 373, 17 A L R 242, at pp 245, 251–3, 256 259 *Buchanan v Commonwealth*, (1913) 16 C L R 315 at pp 329, 335, 19 A L R 251, at pp 255 257, *Federal Commissioner of Taxation v Munro*, (1926) 38 C L R 153 at pp 186, 188, 210, 32 A L R 339, at pp 352 3 361

(b) *Per* Isaacs and Rich JJ An appropriation Act of the Commonwealth Parliament appropriating money towards payment in respect of an agreement made by the Executive Government on behalf of the Commonwealth which agreement without Parliamentary authority would be invalid, does not validate that agreement *Commonwealth v Colonial Ammunition Co Ltd* (1924) 34 C L R 198 See also *New South Wales v Bardolph* (1934) 52 C L R 455, 41 A L R 2

(c) As to whether the payment to the Commonwealth by a wool top manufacturing company of a share of the profits (called a licence fee), in return for consent by the Commonwealth to a sale of wool tops by the Company is a 'taxation' within the meaning of this section, see *Commonwealth v Colonial Combing, Spinning and Weaving Co Ltd*, (1922) 31 C L R 421 at pp 443 *et seq* 460, 29 A L R 138, at pp 144 *et seq*, 151

(d) As to whether the payment to the Commonwealth by a wool top manufacturing company of a share of the profits (called a licence fee), in return for consent by the Commonwealth to a sale of wool-tops by the Company is a tax or a licence within the meaning of this section see *Commonwealth v Colonial Combing Spinning and Weaving Co Ltd*, (1922) 31 C L R 421 at pp 464 5, 29 A L R 138, at p 153

Appropriation Bills

54 (a) The proposed law which appropriates revenue or moneys (b) for the ordinary annual services of the Government shall deal only with such appropriation

NOTES OF CASES (a) As to the effect of a breach of the provisions of this section on the validity of an Act, see *Osborne v Commonwealth*, (1911) 12 C L R 321 at pp 336 351 3, 355 6, 365, 373–4, 17 A L R 242 at pp 245, 251–3, 256 259 *Buchanan v Commonwealth*, (1913) 16 C L R 315, at p 329, 19 A L R 251, at p 255

(b) *Per* Isaacs and Rich JJ An Appropriation Act of the Commonwealth Parliament appropriating money towards payment in respect of an agreement made by the Executive Government on behalf of the Commonwealth, which agreement without Parliamentary authority, would be invalid, does not validate that agreement. *Commonwealth v Colonial Ammunition Co Ltd* (1924) 34 C L R 198 See also *New South Wales v Bardolph*, (1934) 52 C L R 455, 41 A L R 2

Tax Bill

55 (a) Laws imposing taxation (b) shall deal only with the imposition of taxation (c), and any provision therein dealing with any other matter (d) shall be of no effect.

Laws imposing (e) taxation, except laws imposing duties of customs or of excise, shall deal with (e) one subject of taxation only (f); but laws imposing duties of customs shall deal with duties of customs only (g), and laws imposing duties of excise shall deal with duties of excise only.

NOTES OF CASES —(a) Held by the High Court that the limitations imposed by this section upon the making of laws imposing taxation apply only to such laws as are made under the power conferred by s 51 (ii), and do not apply to laws made under the power conferred by s 122 to make laws for the government of Territories *Buchanan v Commonwealth*, (1913) 16 C L R 315, 19 A L R 251

(b) Held by the Full Court of Victoria that Part VIII of the *Customs Act* 1901 (Commonwealth) is not a 'law imposing taxation' within the meaning of this section *Stephens v Abrahams* (No 2) (1903) 29 V L R 229, 9 A L R 89 24 A L T 216

As to the generic term 'taxation' in this section including customs and excise duties, see *Attorney-General for New South Wales v Collector of Customs, New South Wales*, (1908) 5 C L R 818, at pp 880, 855; 14 A L R 516, at pp 527, 529

Section cited by Barton, *J* as an instance of the use of the generic term "taxation", and the specific terms "duties of customs" and "duties of excise", whereas in s 53 the generic term "taxation" includes duties of customs and duties of excise *Attorney General for New South Wales* v *Collector of Customs for New South Wales*, (1908) 5 C L R 818, at p 838, 14 A L R 516, at p 523

As to whether s 7 of the *Customs Tariff* 1908 which provides *inter alia* that all duties of customs collected pursuant to any tariff or tariff alteration shall be deemed to have been lawfully imposed and collected—is a "law imposing taxation" within the meaning of this section see *Sargood Bros* v *Commonwealth*, (1910) 11 C L R 258, at pp 267, 274, 280 287, 16 A L R 483, at pp 486, 489, 491, 494

As to whether the *Customs Act* 1901 is a law imposing taxation see *G G Crespin & Son* v *Colac Co operative Farmers Ltd* (1916) 21 C L R 201 at p 217 22 A L R 86 at p 90

As to whether the *Land Tax Assessment Act* 1910 is a law imposing taxation see *Osborne* v *Commonwealth* (1911) 12 C L R 321 at pp 335 6 349 356 372 17 A L R 242, at pp 245 250 252 3 259

Argument that s 16 (2) of the *Income Tax Assessment Act* 1915 1918 which provides that "where, in the opinion of the Commissioner, a company has not in any year distributed to its members or shareholders a reasonable proportion of its taxable income the taxable income of the company shall be deemed to have been distributed to the members or shareholders in proportion to their interests in the paid up capital of the Company if the Commissioner is satisfied that the total tax payable on it as distributed income is greater than the tax payable on it by the company" imposes a penalty and is not income tax, and is therefore a contravention of this section and of no effect not upheld by High Court *Cornell* v *Deputy Federal Commissioner of Taxation* (*South Australia*), (1920) 29 C L R 39, 26 A L R 295

Held by the High Court that the provisions of ss 4 of the *Customs Act* 1901–1916 which provides that "whenever any such customs security is put in suit by the Collector the production thereof without further proof shall entitle the Collector to judgment for the sum stated in the bond against the persons appearing to have executed the same unless the defendants shall prove compliance with the condition or that the security was not executed by them or release or satisfaction is a law relating to customs and not invalid under this section *Commonwealth* v *Melbourne Harbour Trust Commissioners*, (1922) 31 C L R 1 28 A L R 42)

As to whether the payment to the Commonwealth by a wool top manufacturing company of a share of the profits (called a licence fee) in return for consent by the Commonwealth to resale of wool tops by the company, is taxation see *Commonwealth* v *Colonial Combing, Spinning, and Weaving Co Ltd.*, (1922) 31 C L R 421 at pp 443 v 457, 460 29 A L R 138 at pp 141 v, 150 f

(c) Held by the High Court (Griffith *C J*, Barton and O'Connor, *JJ*, Isaacs and Higgins *JJ* dissenting) that an Act purporting to impose duties of excise on certain manufactured goods with a proviso that the Act shall not apply to any such goods manufactured under satisfactory conditions of labour, is invalid as dealing with matters other than the imposition of taxation, and that such other matter could not be omitted as being of no effect since with its omission the Act would have an operation inconsistent with the expressed intention of the legislature *R* v *Barger Commonwealth* v *McKay* (1908) 6 C L R 41 14 A L R 374

Held by the High Court that the tax imposed by the Parliament by s 39 of the *Land Tax Assessment Act* 1910 1911 upon the shareholders of a company in respect of land owned by the company, is land taxation, and is not invalid by reason of this section *Morgan* v *Deputy Federal Commissioner of Land Tax New South Wales* (1912) 15 C L R 661, 19 A L R 1.0, *Attorney General for Queensland* v *Attorney-General for the Commonwealth* (1915) 20 C L R 148 21 A L R 221 Special leave to appeal from this latter decision to the Privy Council refused by Privy Council *Attorney General for Queensland* v *Attorney General for the Commonwealth* (1916) 1 C L R 2 A L R 81

Held by the High Court that the provisions of ss 86 (1) of the *Land Tax Assessment Act* 1910 under which a husband or wife to whom land is transferred is deemed in certain events to be a joint owner, and as such liable to land tax are *ultra vires* either as being in contravention of this section or as being beyond the powers conferred on the Commonwealth Parliament by the Constitution *Waterhouse* v *Deputy Federal Commissioner of Land Tax South Australia* (1914) 18 C L R 661 20 A L R 155

Held by the High Court that the provisions of s 8 (1) of the *Land Duty Assessment Act* 1914 under which the property which passed from a deceased person by a gift *inter vivos* or settlement made within one year before the testator's decease shall be deemed for the purposes of the Act to be part of his estate is not invalid as dealing with more than one subject of taxation within the meaning of s 55 of the Constitution *National Trustees Executors and Agency Co of Australasia Ltd* v *Federal Commissioner of Taxation*, (1916) 22 C L R 367 22 A L R 409

Held by the High Court that the inclusion in the *Income Tax Assessment Act* 1915 1916 (which is incorporated with the *Income Tax (Assessment) Act* 1915 1916) of the provision that the income shall include five per centum of the capital value of land and improvements thereon owned or used rent free by the tax payer for the purpose of residence or enjoyment does not make the Income Tax Acts in question deal with a subject of taxation other than income and that the provisions in question are not invalid under this section as dealing with more than one subject of taxation *Harding* v *Federal Commissioner of Taxation*, (1917) 24 C L R 110, 23 A L R 157

Held by the High Court (Isaacs, Higgins, Gavan Duffy, Rich and Starke *JJ*) that neither the *Income Tax Assessment Act* 1922–1924 nor the *Income Tax Assessment Act* 1922–1923, nor either of the Taxing Acts incorporating those Assessment Acts is obnoxious to any of the provisions of this section Meaning of the two paragraphs of s 55, and the legal effect of the contravention of each paragraph, discussed *Federal Commissioner of Taxation* v *Munro British Imperial Oil Co Ltd* v *Commissioner of Taxation* (1926) 38 C L R 153, at p 180, 32 A L R 339, at p 352

(d) As to the meaning of other matter see *Stephens* v *Abraham* (No 2) (1904) 29 A L R 229 9 A L R 89 24 A L R 216

(e) As to whether a law dealing with taxation is necessarily a law imposing taxation, see *Osborne* v *Commonwealth*, (1911) 12 C L R 321, at pp 335 6 349 355 360 373, 17 A L R 242 at pp 245, 250, 252, 256, 259, *Buchanan* v *Commonwealth* (1913) 16 C L R 315 at p 328 19 A L R 251, at p 255

As to whether a distinction exists between "laws imposing taxation" and laws "dealing with the imposition of taxation", see *Federal Commissioner of Taxation* v *Munro British Imperial Oil Co Ltd* v *Federal Commissioner of Taxation* (1926) 38 C L R 153, at p 180, 32 A L R 339, at p 352

(f) As to whether the transgression of the second paragraph of this section is fatal to the validity of the provision which so transgresses, see *Osborne* v *Commonwealth*, (1911) 12 C L R 321 at pp 336–7, 350–3, 355–7, 372–4; 17 A L R, 242, at pp 245–6, 251–4 259–60, *Buchanan* v *Commonwealth*, (1913) 16 C L R 315, at p 329, 19 A L R 251, at p 255

As to whether the *Land Tax Assessment Act 1910* deals with more than one subject of taxation see Osborne v *Commonwealth*, (1911) 12 C L R 321, at pp 345–49, 349–50, 355, 357, 362–4, 373–8, 17 A L R 242, at pp 245, 250, 255, 259.

Held by the High Court (Knox *C J*, Isaacs and Rich *JJ*) that the tax imposed by the combined effect of s 26 (1) of the *Income Tax Assessment Act* 1922 1923 and the *Income Tax Acts* 1922 and 1923 is not a subject of taxation different from that dealt with by the other provisions of those Acts, and that those Acts are not in that respect obnoxious to the provisions of this section *British Imperial Oil Co Ltd* v *Federal Commissioner of Taxation* (1925) 35 C L R 422, 31 A L R 129.

Held by the High Court that the provision in s 14 (5) of the *Wartime Profits Tax Assessment Act* 1917–1918 which in certain event imposed on the transferee of a business a personal liability to pay war time profits tax on profits earned in the business prior to the transfer did not deal with a subject of taxation other than war time profits, and was therefore not obnoxious to this section *Federal Commissioner of Taxation* v *Hapkins Ltd*, (1926) 38 C L R 241, 32 A L R 432.

Held by the High Court that s 20 (2) (*b*) of the *Income Tax Assessment Act* 1922 1932 which requires a company to pay income tax on the interest paid by it to any person, who is an absentee, on money raised by debentures of the company and used in Australia is not invalid as having an extra territorial application or as contravening this section in dealing with more than one subject of taxation the outgoings as well as income *Colonial Gas Association Ltd* v *Federal Commissioner of Taxation* (1934) 51 C L R 17, 40 A L R 187, 2 A I D 457.

Quaere per Pitchard Dixon *JJ* whether s 47 (1) of the Income Tax Assessment Act, in imposing an additional tax on unpaid tax if certain conditions exist contravenes this section of the Constitution as not imposing a tax upon income which is the subject matter of the Act or is not dealing with taxation at all *Ellis* v *Federal Commissioner of Taxation* (1934) 51 C L R 200, at p 211, 41 A L R 211, at pp 212, 5.

See also notes (*c*) and (*e*) *supra* as to *Federal Commissioner of Taxation* v *Munro*.

(*g*) Observations as to separation of Customs Acts (i.e. the machinery Acts) from the Customs Tariffs (i.e. the taxing Acts) *Commonwealth* v *Melbourne Harbour Trust Commissioners* (1922) 31 C L R 1, at p 14, 28 A L R 325, at p 331. Held by the High Court that s 8 of the Customs Tariff (Industries Preservation) Act 1921–1922 deals with duties of customs only and therefore does not infringe the second paragraph of s 55 of the Constitution *Nott Bros & Co Ltd* v *Barker* (1925) 36 C L R 20, 31 A L R 256.

Recommendation of money votes.

56. A vote, resolution, or proposed law for the appropriation of revenue or moneys shall not be passed unless the purpose of the appropriation has in the same session been recommended by message of the Governor General to the House in which the proposal originated.

Disagreement between the Houses.

57. If the House of Representatives passes any proposed law, and the Senate rejects or fails to pass it, or passes it with amendments to which the House of Representatives will not agree, and if after an interval of three months the House of Representatives, in the same or the next session, again passes the proposed law with or without any amendments which have been made, suggested, or agreed to by the Senate, and the Senate rejects or fails to pass it, or passes it with amendments to which the House of Representatives will not agree, the Governor-General may dissolve the Senate and the House of Representatives simultaneously[g]. But such dissolution shall not take place within six months before the date of the expiry of the House of Representatives by effluxion of time.

If after such dissolution the House of Representatives again passes the proposed law, with or without any amendments which have been made, suggested, or agreed to by the Senate, and the Senate rejects or fails to pass it, or passes it with amendments to which the House of Representatives will not agree, the Governor-General may convene a joint sitting of the members of the Senate and of the House of Representatives.

The members present at the joint sitting may deliberate and shall vote together upon the proposed law as last proposed by the House of Representatives, and upon amendments, if any, which have been

made therein by one House and not agreed to by the other, and any such amendments which are affirmed by an absolute majority of the total number of the members of the Senate and House of Representatives shall be taken to have been carried, and if the proposed law, with the amendments, if any, so carried is affirmed by an absolute majority of the total number of the members of the Senate and the House of Representatives, it shall be taken to have been duly passed by both Houses of the Parliament, and shall be presented to the Governor-General for the Queen's assent.

GENERAL NOTES.—(1) Up to the date of the preparation of this volume the only dissolution which had occurred was that which took place in 1914 the proposed law occasioning it being the Government Preference Prohibition Bill which was twice passed by the House of Representatives and twice rejected by the Senate.

Royal Assent to Bills

58 When a proposed law passed by both Houses of the Parliament is presented to the Governor-General for the Queen's assent, he shall declare, according to his discretion, but subject to this Constitution, that he assents[a] in the Queen's name, or that he withholds assent, or that he reserves[1] the law for the Queen's pleasure.

Recommendations by Governor-General

The Governor-General may return[2] to the House in which it originated any proposed law so presented to him, and may transmit therewith any amendments which he may recommend, and the House may deal with the recommendation.

GENERAL NOTES.—(1) Up to the date of the preparation of this volume the following Bills have been reserved in pursuance of this paragraph:

Customs Tariff (British Preference) 1906
Navigation Bill 1912 (now Act No. 4 1912)
Navigation Bill 1919 (now Act No. 42 1919)
Navigation Bill 1920 (now Act No. 1 1921)
Navigation Bill 1925 (now Act No. 8 1925)
Navigation Bill 1926 (now Act No. 8 1926)
Navigation (Maritime Conventions) Bill 1934 (now Act No. 49 1934)
Navigation Bill 1935 (now Act No. 30 1935)

(2) Up to the date of the preparation of this volume the following proposed laws have been returned in pursuance of this paragraph to the House in which they originated:

Commonwealth Electoral Bill 1902 (Senate Journals 1902, p. 56)
High Court Procedure Bill 1903 (House of Representatives Votes and Proceedings 1903, p. 110)
Life Assurance Companies Bill 1905 (House of Representatives Votes and Proceedings 1905, p. 134)
Customs Tariff (British Preference) Bill 1906 (House of Representatives Votes and Proceedings, 1906, p. 17)
Seamen's Compensation Bill 1911 (House of Representatives Votes and Proceedings 1911, p. 165)
Navigation Bill 1912 (Senate Journal 1912, p. 209)
Customs Tariff Bill 1921 (House of Representatives Votes and Proceedings 1920-21, p. 847)
Customs Tariff Bill 1926 (House of Representatives Votes and Proceedings 1926-27, p. 1,212)
Excise Tariff Bill 1927 (House of Representatives Votes and Proceedings 1926-27-28, p. 730)
Income Tax Bill 1931 (House of Representatives Votes and Proceedings 1929-30-31, p. 802)

NOTES OF CASES.—(a) As to whether a Bill assented to by the Governor-General in the first place could be subsequently reserved for the signification of His Majesty's pleasure see *John Sharp & Sons Ltd* v *The Katherine Maid all* (1924) 34 C.L.R. 420 at p. 433, 30 A.L.R. 321 at p. 326.

Disallowance by the Queen

59 The Queen may disallow[1] any law[a] within one year from the Governor-General's assent, and such disallowance on being made known by the Governor-General by speech or message to each of the Houses of the Parliament, or by Proclamation, shall annul the law from the day when the disallowance is so made known.

GENERAL NOTES.—(1) Up to the date of the preparation of this volume no laws have been disallowed in pursuance of this section.

NOTES OF CASES.—(a) *Per* Barton *A.C.J.* Law in this section means a complete law passed by both Houses, and assented to by the Governor-General *Buchanan* v *Commonwealth*, (1913) 16 C.L.R. 315, at p. 329, 19 A.L.R. 251, at p. 255.

After the first general election no Minister of State shall hold office for a longer period than three months unless he is or becomes a senator or a member of the House of Representatives

GENERAL NOTES (1) Following is a list of the Departments of State established in pursuance of this section and of the changes made prior to the date of the preparation of this volume together with references to the relevant pages in the *Gazette* —

The Department of External Affairs The Attorney General's Department The Department of Home Affairs The Department of the Treasury The Department of Trade and Customs The Department of Defence The Postmaster General's Department	Established as from 1st January, 1901 (*Gazette*, 1901, p 4)
The Prime Minister's Department	Established as from 1st July, 1911 (*Gazette*, 1911, p 2393)
The Department of the Navy	Established as from 12th July, 1915 (*Gazette*, 1915 p 1323)
The Department of Works and Railways	Established as from 14th November, 1916 (*Gazette*, 1916 p 3177)
The Department of External Affairs — *Renamed* The Home and Territories Department	As from 14th November, 1916 (*Gazette*, 1917, p 358)
The Department of Home Affairs — *Renamed* The Department of Works and Railways	As from 14th November 1916 (*Gazette*, 1917, p 358)
The Department of Repatriation	Established as from 28th September, 1917 (*Gazette*, 1917, p 2585)
The Department of Health	Established as from 7th March 1921 (*Gazette*, 1921, p 515)
The Department of External Affairs	Established as from 21st December, 1921 (*Gazette* 1921 p 2403)
The Department of Defence *Established in lieu of* The Departments of Defence and of the Navy	As from 21st December 1921 (*Gazette* 1921, p 2403)
The Department of Markets and Migration	Established as from 16th January, 1924 (*Gazette* 1924, p 35)
The Department of Industry	Established as from 10th December, 1928 (*Gazette* 1928 p 3465)
The Department of Markets and Migration — *Renamed* The Department of Markets	As from 19th January, 1928 (*Gazette* 1928, p 411)
The Department of Markets *Renamed* The Department of Markets and Transport	As from 10th December 1928 (*Gazette*, 1928, p 3465)
The Department of Home and Territories *Renamed* — The Department of Home Affairs	As from 10th December, 1928 (*Gazette*, 1928, p 3465)
The Department of Markets and the Department of Transport— *Established in lieu of* The Department of Markets and Transport	As from 21st April, 1930 (*Gazette*, 1930, p 861)
The Department of the Interior— *Established in lieu of* The Departments of Home Affairs, Transport and Works and Railways	As from 11th April 1932 (*Gazette*, 1932, p 520)
The Department of Markets— *Renamed*— The Department of Commerce	As from 13th April, 1932 (*Gazette*, 1932, p 543)

The Departments of State in existence at the date of the preparation of this volume were therefore twelve in number, and (arranged in alphabetical order) are as follow —

Attorney-General's Department
Department of Commerce
Department of Defence
Department of External Affairs
Department of Health
Department of Industry
Department of the Interior.
Postmaster-General's Department.
Prime Minister's Department
Department of Repatriation
Department of Trade and Customs
Department of the Treasury

NOTES OF CASES —(a) As to the classes of contracts which Ministers of State might be authorised to make under this section, see *Commonwealth* v *Colonial Combing, Spinning and Weaving Co. Ltd.*, (1922) 31 C.L.R 421, at p 432, 29 A L R 138, at p 140.

65. Until the Parliament otherwise provides[1], the Ministers of State shall not exceed seven in number, and shall hold such offices as the Parliament prescribes, or, in the absence of provision, as the Governor-General directs. **Number of Ministers.**

GENERAL NOTES.—(1) The Parliament has "otherwise provided" as follows, in pursuance of this section:—

(i) By the *Ministers of State Act* 1915, the number of Ministers of State was increased to eight.
(ii) By the *Ministers of State Act* 1917, the number of Ministers of State was increased to nine.
(iii) By the *Ministers of State Act* 1935, the number of Ministers of State was increased to ten.

66. There shall be payable to the Queen, out of the Consolidated Revenue Fund of the Commonwealth, for the salaries[a] of the Ministers of State, an annual sum which, until the Parliament otherwise provides,[1] shall not exceed twelve thousand pounds a year. **Salaries of Ministers.**

GENERAL NOTES.—(1) The Parliament has "otherwise provided", in pursuance of this section, by means of the following Acts:

Name of Act	Annual Sum Appropriated £	s	d
Ministers of State Act 1915	13,650	0	0
Ministers of State Act 1917	15,080	0	0
Financial Emergency Act 1931	11,857	10	0
Financial Emergency Act 1932	10,710	0	0
Financial Relief Act 1934	12,240	0	0
Ministers of State Act 1935	13,560	0	0
Financial Relief Act 1935	13,094	0	0

NOTES OF CASES.—(a) Held by the High Court that the salaries of Ministers of the Crown so far as they are earned in Victoria are not liable to assessment under the Income Tax Acts of Victoria. *Deakin v. Webb*, *Lyne v. Webb* (1904) 1 C.L.R. 585; 10 A.L.R. 87. (Note.—By the *Commonwealth Salaries Act* 1907 the Parliament enacted *inter alia* that subject to certain provisions, the taxation by a State, in common with other salaries earned within the State of the allowances and salaries paid after the commencement of that Act of Ministers of the Parliament of the State and of Ministers of State for the Commonwealth and the Presiding Officer and Chairmen of Committees of each House of the Parliament (all being respectively Members of the Parliament elected in the State) should not, if the taxation was not at a higher rate or to a greater extent than was imposed on other salaries of the same amount earned in the State, be deemed—

(i) to be an interference with the exercise of any power of the Commonwealth, or
(ii) to be inconsistent with any Act by or in pursuance of which the salary was fixed or made payable.

67. Until the Parliament otherwise provides,[1] the appointment and removal of all other officers of the Executive Government of the Commonwealth shall be vested in the Governor-General in Council, unless the appointment is delegated by the Governor-General in Council or by a law of the Commonwealth to some other authority.[a] **Appointment of civil servants.**

GENERAL NOTES.—(1) Under various Acts the appointment and removal of officers has been vested in other authorities than the Governor-General. For Acts passed in pursuance of this section, see list contained in Table of Commonwealth legislation opposite to section 67 (*supra* pp. xxxv–xxxvii).

NOTES OF CASES.—(a) Held by the High Court that in the case of an officer of the Civil Service of South Australia who was retained in the service of the Commonwealth when the Department in which he was employed was transferred to the Commonwealth, any power of removing him from the Public Service was, by virtue of this section and s. 67 of the *Commonwealth Public Service Act* 1922, vested in the Commonwealth Board of Commissioners and not in the Governor-General. *Bradshaw v. Commonwealth* (1925) 36 C.L.R. 385; 31 A.L.R. 441.

Question whether this section or s. 70 of the Constitution applies in the application to South Australian transferred officers of the provisions of s. 41 of the *Civil Service Act* 1874 (S.A.) relating to the diminution of the number of officers in a Department discussed by High Court. *Edwards v. Commonwealth*, (1935) 54 C.L.R. 313; 42 A.L.R. 95.

Command of naval and military forces

68.[a] The command in chief of the naval and military forces of the Commonwealth is vested in the Governor General[b] as the Queen's representative.

NOTES OF CASES (a) As to whether this section constitutes sufficient authority to the Commonwealth to manufacture at the Commonwealth Clothing Factory established under s 63 of the Defence Act uniforms for state officers and for employees in various public utilities and institutions in the State, and for some private persons see *Attorney General for Victoria v Commonwealth* (1935) 52 C L R 533 at pp 555, 559, 566–7, 41 A L R 246 at pp 249 251 254

(b) As to the royal prerogative as to war being exercisable by the Governor-General and his Federal Ministers and not by State Ministers see *Joseph v Colonial Treasurer* (N S W) (1918) 25 C L R 42 at p 51 24 A L R 185 at p 194

Transfer of certain departments.

69. On a date or dates to be proclaimed by the Governor General after the establishment of the Commonwealth the following departments of the public service[a] in each State shall become transferred to the Commonwealth[b][c] :-

Posts, telegraphs, and telephones[c] :

Naval and military defence[d] :

Lighthouses, lightships, beacons, and buoys :

Quarantine

But the Departments of customs and of excise in each State shall become transferred to the Commonwealth on its establishment.[e]

GENERAL NOTES (1) The Departments of (i) Posts telegraphs and telephones, and (ii) Naval and military defence were transferred to the Commonwealth on 1st March 1901 see *Gazette*, 14th February 1901, p 19 and 20th February, 1901, p 21

Although the Commonwealth has passed laws relating to (iii) Lighthouses lightships beacons and buoys, and (iv) Quarantine the State Departments dealing with those matters were not transferred to the Commonwealth in pursuance of this section

NOTES OF CASES (a) *Per* Latham C J The reference in this section to departments of the Public Service is a reference to the employment of the State employed in those departments *R v Brooker Ex parte Williams* (1935) 54 C L R 262 at p 274 12 A L R 45 at p 49

(b) Held by the Full Court of the Supreme Court of New South Wales (Owen and G B Simpson JJ Stephen J dissenting) that notwithstanding the transfer of post offices to the Commonwealth in pursuance of this section the Postage Act of the State still continued in force within the area of the post offices and a person who stole a letter in such a post office might be indicted under that Act and tried before a State Court *R v Bamford* (1901) 1 S R N S W 7

(c) As to the department of posts telegraphs and telephones being a governmental service and not commercial see *Marconi's Wireless Telegraph Co Ltd v Commonwealth* (N S W) (1913) 16 C L R 178 at p 207 19 A L R 129 at p 140

(d) As to whether, in view of the transfer to the Commonwealth under this section of the Department of Naval and Military Defence the Commonwealth can so far dissociate itself from the administration of that department as to say any of its functions are not functions of the Commonwealth, but of some person in his individual capacity, entirely independent of the Commonwealth see *Zacharassen v Commonwealth*, (1917) 24 C L R 166, at p 179, 24 A L R 81, at p 82

As to the royal prerogative as to war being exercisable by the Governor General and his Federal Ministers (not by the State Ministers) see *Joseph v Colonial Treasurer* (N S W), (1918) 25 C L R 42, at p 51, 24 A L R 185, at p 193

(e) Held by the Full Court of the Supreme Court of New South Wales that after the transfer of the Department of Customs to the Commonwealth under this section the Full Court had not jurisdiction to issue a mandamus to the Collector of Customs to compel him to perform a duty which he owed to the Commonwealth Government *Ex parte Goldring* (1903) 3 S R N S W 260 9 A L R (C N) 37

Certain powers of Governors to vest in Governor-General.

70[a]. In respect of matters which, under this Constitution, pass to the Executive Government of the Commonwealth, all powers and functions which at the establishment of the Commonwealth are vested in the Governor of a Colony, or in the Governor of a Colony

with the advice of his Executive Council, or in any authority of a Colony, shall vest in the Governor-General, or in the Governor-General in Council[b], or in the authority exercising similar powers under the Commonwealth[c], as the case requires.

NOTES OF CASES (a) As to whether this section has the effect of empowering a municipality by agreement to lease land to the Commonwealth, notwithstanding that the municipality was not so authorized by State law, see *R v Registrar of Titles (Vict), Ex parte Commonwealth* (1915) 20 C L R 379 at pp 386, 397 404, 21 A L R 445, at pp 437 441, 444

(b) Held by the High Court that the discretion conferred by s 60 (ii) of the *Public Service Act* 1895 (N S W) as to the amount of gratuity payable to an officer of the State transferred to the Commonwealth was vested in the Governor General in Council by virtue of this section *N S W v Commonwealth*, (1908) 6 C L R 214

As to the Royal prerogative as to war being exercisable by the Governor General and his Federal Ministers (not by the State Ministers) see *Joseph v Colonial Treasurer* (N S W), (1918) 25 C L R 32, at pp 46 51 24 A L R 18) at pp 190 193

(c) As to the Commonwealth Public Service Board of Commissioners being under s 67 of the *Commonwealth Public Service Act* 1922 the authority exercising "similar powers under the Commonwealth" to those exercised by the Governor of South Australia under s 28 of the Civil Service *Act* 1874 (S A), see *Bradshaw v Commonwealth*, (1925) 36 C L R 585, 31 A L R 441

Question whether this section or s 67 of the Constitution applies to the application to South Australian transferred officers of the provisions of s 14 of the *Civil Service Act* 1874 (S A) relating to the diminution of the number of officers in a Department discussed by the High Court *Edwards v Commonwealth* (1935) 54 C L R 513 12 A L R 9)

CHAPTER III—THE JUDICATURE.

CHAPTER III THE JUDICATURE

Judicial power and Courts

71 [a] The judicial power[b] of the Commonwealth shall be vested in a Federal Supreme Court to be called the High Court of Australia, and in such other federal courts[c] as the Parliament creates[1], and in such other courts as it invests with federal jurisdiction[d] The High Court shall consist of a Chief Justice, and so many other Justices, not less than two, as the Parliament prescribes[2].

GENERAL NOTES (1) The other Federal Courts created by the Parliament up to the date of the preparation of this volume, are

(i) The Commonwealth Court of Conciliation and Arbitration created by the *Commonwealth Conciliation and Arbitration Act* 1904 1930

(ii) The Federal Bankruptcy Court, created by the *Bankruptcy Act* 1924 1930 and

(iii) The Supreme Court of the Australian Capital Territory created by the *Seat of Government Supreme Court Act* 1933.

(2) By the *Judiciary Act* 1903 the Parliament increased the number of other Justices of the High Court from two to four and by the *Judiciary Act* 1912 from four to six by the *Judiciary Act* 1933 the number was reduced to five

NOTES OF CASES—(a) *Per* Griffith C J, The provisions of this section are complete and exhaustive and there cannot be a third class of courts which are neither Federal Courts nor State Courts invested with federal jurisdiction. *New South Wales v Commonwealth*, (1915) 20 C L R 54 at p 62 (see also pp 89 90 108-9), 21 A L R. 128 at p 133 (see also pp 113 144 151)

Held by the High Court that judicial power cannot be vested in the Courts mentioned in this section *Waterside Workers Federation of Australia v Alexander* (1918) 25 C L R 434 24 A L R 541

Per Isaacs and Rich JJ, This section requires judicial functions to be vested in Courts strictly so called *Waterside Workers Federation of Australia v Gilchrist Watt and Sanderson Ltd* (1924) 34 C L R 482 at pp 516, 543, 30 A L R 402 at pp 421 425

(b) *Per* Griffith C J and Barton J, The judicial power referred to in this section includes appellate as well as original jurisdiction *Huddart Parker and Co Pty Ltd v Moorehead* (1909) 8 C L R 330, at pp 358 9 371 3 *Baxter v Ah Way* (1909) 8 C L R 626 at pp 627 632 4 641 4 11 A L R 306, at pp 308 9 311 3

Held by the High Court that an inquiry by the Comptroller General of Customs in pursuance of the powers conferred upon him by the *Australian Industries Preservation Act* 1906 1907 s 15B is not an exercise of the judicial power of the Commonwealth *Huddart Parker and Co Pty Ltd v Moorehead*, (1909) 8 C L R 330, 15 A L R 241

Nature of judicial power discussed by High Court *Huddart Parker and Co Pty Ltd v Moorehead*, (1909) 8 C L R 330, at pp 355 7 377 81 381 5 387, 15 A L R 241 at pp 249 50 258 62

Per O'Connor, J, The judicial power which this section declares shall be vested in the High Court is the supreme judicial power of the Commonwealth and it must necessarily include the power to keep inferior Courts of the federal judicial system from exceeding their jurisdiction *R v Commonwealth Court of Conciliation and Arbitration Ex parte Whybrow & Co*, (1910) 11 C L R 1 at p 41, 16 A L R 373, at p 387

Held by the High Court (Griffith, C.J., and Barton, Isaacs, Powers and Rich, JJ., Higgins, J., doubting) that the power conferred on the Commonwealth Court of Conciliation and Arbitration by the *Commonwealth Conciliation and Arbitration Act* 1904–1915 to enforce awards made by it is part of "the judicial power of the Commonwealth" within the meaning of this section and can only be vested in the Courts mentioned in this section *Waterside Workers' Federation of Australia* v *Alexander*, (1918) 25 C.L.R. 434, 24 A.L.R. 311.

Held by Barton, Isaacs, Powers and Rich, JJ., that inasmuch as by s. 12 (1) of the *Commonwealth Conciliation and Arbitration Act* 1904–1915 the President of the Commonwealth Court of Conciliation and Arbitration is to be appointed for seven years only that section is at variance with section 72 of the Constitution read with this section and the provisions conferring upon the Court power to enforce its awards are therefore invalid. *Ibid.*

Per Griffith, C.J. (dissenting). The assignment of a Justice of the High Court to discharge the functions of the President is valid and he may both make awards and impose penalties. *Ibid.*

Held by the High Court that the provision in s. 16 (2) of the *Income Tax Assessment Act* 1915–1918, which provides that where in the opinion of the Commissioner a company has not in any year distributed to its members or shareholders a reasonable proportion of its taxable income the taxable income of the company shall be deemed to have been distributed to the members or shareholders in proportion to their interests in the paid-up capital of the company, if the Commissioner is satisfied that the total tax payable on it as distributed income is greater than the tax payable on it by the company, does not purport to confer judicial power upon the Commissioner of Taxation. *Cornell* v *Deputy Federal Commissioner of Taxation (South Australia)* (1920) 2 C.L.R. 89, 26 A.L.R. 295.

As to whether any functions not within "the judicial power of the Commonwealth" can be conferred on the High Court see *Re the Judiciary and Navigation Acts* (1921) 29 C.L.R. 257, 27 A.L.R. 193; *Victorian Stevedoring and General Contracting Co. Pty. Ltd. and Meakes* v *Dignan*, (1931) 46 C.L.R. 73, at p. 116, 38 A.L.R. 22 at p. 7; *New South Wales* v *Commonwealth (No. 1)* (1932) 46 C.L.R. 155, at p. 186, 38 A.L.R. 345 at p. 2[illegible].

Held by the High Court that the order which the Minister for Trade and Customs made under regulation 20 (3) of the Treaty of Peace Regulations vesting in the Public Trustee the property of certain German nationals was not an exercise of the judicial power of the Commonwealth within the meaning of this section *Loeb* v *Kronheimer* (1921) 29 C.L.R. 329, at pp. 337–340, 7 A.L.R. 294, at pp. 258–60.

Held by the High Court that the provision in s. 48 of the *Customs Act* 1901–1916 providing that whenever any such actions or suits is put in suit by the Collector the production thereof without further proof shall entitle the Collector to judgment if the instituted liability against the persons appearing to have executed the same unless the defendants shall prove compliance with the condition or that the security was not executed by them or release or satisfaction is not an exercise of the judicial power of the Commonwealth. *The Commonwealth* v *Melbourne Harbour Trust Commissioners* (1922) 31 C.L.R. 1, 28 A.L.R. 32.

Held by the High Court that s. 34 of the *Immigration Act* 1901–1920 which provides for persons of certain classes, who are not born in Australia being summoned before a Board to show cause why they should not be deported from the Commonwealth and for the Board making to the Minister a recommendation for their deportation does not purport to vest in the Board any portion of the judicial power of the Commonwealth. *R.* v *Macfarlane; Ex parte O'Flanagan and O'Kelly* (1923) 32 C.L.R. 518, at pp. 530, 536, 537, 560; 29 A.L.R. 393 at pp. 399, 401, 403, 408, 410.

Held by the High Court that the power which the *Income Tax Assessment Act* 1922–1923 by ss. 44, 50 and 51 purports to confer upon a Board of Review created under s. 41 of the Act are part of the judicial power of the Commonwealth which under this section can only be vested in Court. *The Board of Review* v *Commissioner of Taxation* (1925) 35 C.L.R. 422, 31 A.L.R. 129.

As to the invalidity of s. 21 (5) of the *Income Tax Assessment Act* 1922 which provides for the reference of a case to a Board of Review see *Federal Commissioner of Taxation* v *Australian Associated Tele. Co. Pty. Ltd.* (1925) 36 C.L.R. 119 at pp. 122, 124, 128, 129; 31 A.L.R. 218, at pp. 220, 221.

Held by the High Court that s. 60 of the *Commonwealth Conciliation and Arbitration Act* 1904–1921—which gives the Commonwealth Court of Conciliation and Arbitration power in certain events to deregister an organization—does not purport to confer on that Court part of the judicial power of the Commonwealth. *Australian Commonwealth Shipping Board* v *Federated Seamen's Union of Australasia*, (1925) 36 C.L.R. 442, 31 A.L.R. 352.

As to whether s. 54A of the *Immigration Act* 1901–1920 which empowers the Minister in certain events to refer to a Board the question whether certain persons not born in Australia should be deported from the Commonwealth and the Board to report thereon such a course is an exercise of the judicial power of the Commonwealth see *Ex parte Walsh and Johnson; In re Yates* (1925) 37 C.L.R. 36, at p. 134, 32 A.L.R. 46 at p. 79.

Held by the High Court (Isaacs, Higgins, Gavan Duffy, Rich and Starke, JJ., Knox, C.J., dissenting) that the powers which the *Income Tax Assessment Act* 1922–1925 by ss. 44, 50 and 51 purports to confer upon a Board of Review created under s. 41 of that Act are not part of the judicial power of the Commonwealth within the meaning of this section and that those sections of the Assessment Act are not an attempt by the Commonwealth Parliament to exercise the judicial power of the Commonwealth. *Federal Commissioner of Taxation* v *Munro*; *British Imperial Oil Co. Ltd.* v *Federal Commissioner of Taxation* (1926) 38 C.L.R. 153, 32 A.L.R. 389. On appeal heard by the Privy Council that the powers which the *Income Tax Assessment Act* 1922–1925 by ss. 44, 50 and 51 purports to confer upon the Board of Review created under s. 41 of that Act are not part of the judicial power of the Commonwealth which, under s. 71 of the Constitution can only be vested in the High Court or a Federal Court. *Shell Company of Australia Ltd.* v *Federal Commissioner of Taxation* 1931 A.C. 275, 44 C.L.R. 530, 37 A.L.R. 1, 1 A.I.D. 113.

As to whether a Marine Court constituted under Part IX. of the *Navigation Act* 1912–1920 exercises the judicial power of the Commonwealth" within the meaning of this section see *R.* v *Turner*, *Ex parte Marine Board of Hobart (Tasmania)* v *Commonwealth*, (1927) 39 C.L.R. 411, at pp. 441–2, 449–50, 33 A.L.R. 174 at pp. 184, 187.

As to the direct vesting by the Constitution itself of judicial power in Courts see *Le Mesurier* v *Connor* (1929) 42 C.L.R. 481, at pp. 499, 500, 514, 516; 36 A.L.R. 41 at pp. 46, 47, 52, 53; 1 A.B.C. 97, at pp. 115–6, 130, 131.

As to the judicial power being exercisable by judges alone and not also by the Court officers, see *Le Mesurier* v *Connor* (1929) 42 C.L.R. 481 at pp. 511, 512, 522, 523, 524, 525; 36 A.L.R. 41 at pp. 51–2, 55–7; 1 A.B.C. 97 at pp. 127, 137, 138, 139–40.

Meaning of "judicial power" discussed by Privy Council. *Shell Company of Australia Ltd.* v *Federal Commissioner of Taxation* 1931 A.C. 275 at p. 295, 44 C.L.R. 530 at p. 542, 37 A.L.R. 1 at p. 6, 1 A.I.D. 114 at p. 123.

(c) Held by the High Court that the Supreme Court of the Northern Territory is not a federal Court within the meaning of this section *Porter v R., Ex parte Yee*, (1926) 37 C.L.R. 432, 32 A.L.R. 144.

(d) As to the meaning of "federal jurisdiction," see *R. v Bamford*, (1901) 1 S.R., N.S.W. 337, at p. 347; *Ah Yick v Lehmert* (1905) 2 C.L.R. 593 at p. 603; 11 A.L.R. 306 at p. 308; *Baxter v Commissioners of Taxation* (N.S.W.), (1907) 4 C.L.R. 1087 at pp. 1113, 1136-8, 1141-5; 1 A.L.R. 313, at pp. 324, 333-6; *Lorenzo v Carey* (1921) 29 C.L.R. 243 at p. 252; 27 A.L.R. 225 at p. 228; *Commonwealth v Limerick Steamship Co. Ltd. and Kelman* (1924) 35 C.L.R. 69; 31 A.L.R. 193; *Ex parte Walsh and Johnson. In re Yates* (1925) 37 C.L.R. 36 at p. 129; 32 A.L.R. 46 at p. 77; *Le Mesurier v Connor*, (1929) 42 C.L.R. 481 at pp. 516, 523; 36 A.L.R. 41 at pp. 53, 56; 1 A.B.C. 97 at pp. 131, 138.

As to appeals from the Supreme Court of a State in the exercise of federal jurisdiction and as to the question whether a particular decision is the exercise of State or Federal jurisdiction see *Commonwealth v Limerick Steamship Co. Ltd. and Kelman* (1924) 35 C.L.R. 69 at pp. 84, 107, 118; 31 A.L.R. 193 at pp. 156, 165, 169 (special leave to appeal from the decision of the High Court in *Commonwealth v Kelman* refused by Privy Council *Kelman v Commonwealth* (1925) 32 A.L.R. 1).

72 [(a)] The Justices of the High Court and of the other courts created by the Parliament — **Judges' appointment, tenure, and remuneration.**

(i.) Shall be appointed by the Governor General in Council:

(ii.) Shall not be removed except by the Governor General in Council, on an address from both Houses of the Parliament in the same session, praying for such removal on the ground of proved misbehaviour or incapacity:

(iii.) Shall receive such remuneration as the Parliament may fix[(b)], but the remuneration shall not be diminished during their continuance in office.

GENERAL NOTES (1)

Salaries of Judges

By the *Judiciary Act* 1903-1927 the Parliament fixed the remuneration of Justices of the High Court at the sum of £5,500 per annum for the Chief Justice and £5,000 per annum for each of the other Justices.

By the *Commonwealth Conciliation and Arbitration Act* 1904-1930 the Parliament fixed the remuneration of the Judges of the Commonwealth Court of Conciliation and Arbitration at the sum of £3,600 per annum for the Chief Judge and £3,500 per annum for each of the other Judges.

By the *Bankruptcy Act* 1924-1930 the Parliament fixed the remuneration of any Federal Bankruptcy Judge who had been immediately prior to his appointment in that capacity, a Justice of a Federal Court, at the same rate of salary as that received by him as a Judge of that Federal Court.

Pensions of Judges

By the *Judiciary Act* 1903-1927, s. 48A (enacted in 1920) pensions at the rates specified in that section were provided for Justices of the High Court upon their retirement.

By the *Financial Emergency Act* 1931 s. 22 payments of pensions under s. 48A of the *Judiciary Act* 1903-1927 were reduced by 20 per cent. (Section 22 was repealed by the *Financial Relief Act* 1933, s. 4.)

By the *Commonwealth Conciliation and Arbitration Act* 1904-1926, s. 14B (enacted in 1920) pensions at the rates specified in that section were provided for Judges of the Commonwealth Court of Conciliation and Arbitration upon their retirement.

By the *Financial Emergency Act* 1931 s. 29 payments of pensions under s. 14B of the *Commonwealth Conciliation and Arbitration Act* 1904-1926 were reduced by 20 per cent. (Section 22 was repealed by the *Financial Relief Act* 1933, s. 4.)

By the *Bankruptcy Act* 1924-1930, s. 14C (enacted in 1930) provision was made that in the case of the retirement of a Federal Bankruptcy Judge who had been immediately prior to his appointment in that capacity a Judge of a Federal Court, there should be payable a pension at the same rate as that to which the Judge would have been entitled if his service as Judge of the Federal Court of Bankruptcy had been a continuance of his services as Judge of that Federal Court.

By the *Financial Emergency Act* 1931 s. 22 payments of pensions under s. 14C of the *Bankruptcy Act* 1924-1930 were reduced by 20 per cent. (Section 22 was repealed by the *Financial Relief Act* 1933, s. 4.)

NOTES ON CASES (a) As to the effect of this section upon the term that the Interstate Commission constituted under s. 101 of the Constitution (with the limited tenure of its members as compared with the tenure provided by s. 72 for Justices of Federal Courts) is a Court within the meaning of this section, see *New South Wales v Commonwealth* (1915) 20 C.L.R. 54 at pp. 62, 72, 76, 93, 107, 108; 21 A.L.R. 128, at pp. 137, 147, 148, 145, 150.

Held by the High Court (Griffith C.J. and Barton, Isaacs, Powers and Rich JJ., Higgins and Gavan Duffy, JJ., dissenting) that this section requires that every Justice of the High Court and every Justice (whether called by that or any other name) of any other Court created by the Parliament shall, subject to the power of removal contained in that section, be appointed for life. *Waterside Workers' Federation of Australia v Alexander*, (1918) 25 C.L.R. 434; 24 A.L.R. 341.

Held by Barton, Isaacs, Powers and Rich JJ. that inasmuch as by s. 12 (1.) of the *Commonwealth Conciliation and Arbitration Act* 1904-1915 the President of the Commonwealth Court of Conciliation and Arbitration is to be appointed for seven years only, that section is at variance with this section read with s. 71 of the Constitution, and the provisions conferring upon the Court power to enforce its awards are therefore invalid. *Waterside Workers' Federation of Australia v Alexander*, (1918) 25 C.L.R. 434, 24 A.L.R. 341.

Per Griffith, C.J. (dissenting): The assignment of a Justice of the High Court to discharge the functions of the President is valid and he may both make awards and impose penalties: *Waterside Workers' Federation of Australia* v. *Alexander*, (1918) 25 C.L.R. 434, at p. 441; 24 A.L.R. 341.

As to judicial appointments under this section being for life, see also *British Imperial Oil Co. Ltd.* v. *Federal Commissioner of Taxation*, (1925) 35 C.L.R. 422, at pp. 433, 435; 31 A.L.R. 129, at pp. 130, 132; *Porter* v. *Le Poidevin* (1926) 7 C.L.R. 472, at pp. 475, 476; 32 A.L.R. 143, at p. 140; *Shell Co. of Australia Ltd.* v. *Federal Commissioner of Taxation* (1931) A.C. 275, at pp. 295, 296; 44 C.L.R. 530, at pp. 546, 547; 37 A.L.R. 1, at p. 7; 1 A.I.D. 113, at p. 126; *Federal Commissioner of Taxation* v. *Munro*, (1926) 38 C.L.R. 153, at pp. 166, 167, 169, 170; 32 A.L.R. 339, at pp. 345, 346, 347; *Le Mesurier* v. *Connor* (1929) 42 C.L.R. 481, at p. 489; 36 A.L.R. 41, at p. 44; 1 A.I.D. 37, at p. 39.

As to the possible effect of this section on the validity of the establishment of Marine Courts under Part IX. of the *Navigation Act* 1912–1920 (the provisions of which, providing for the tenure of the members of the Court) see *R.* v. *Turner*; *Ex parte Marine Board of Hobart (Tasmania)* v. *Commonwealth*, (1927) 39 C.L.R. 411, at pp. 441–449, 450; 34 A.L.R. 14, at pp. 184, 185.

Held by the Privy Council that the tenure of office of members of the Board of Review created under s. 11 of the *Income Tax Assessment Act* 1922–1925 does not conflict with the requirements of this section relating to the tenure of office of members of a Court created by the Commonwealth Parliament: *Shell Co. of Australia Ltd.* v. *Federal Commissioner of Taxation* (1931) A.C. 275, 44 C.L.R. 530, 37 A.L.R. 1, 1 A.I.D. 11.

J

Appellate jurisdiction of High Court.

73[a] The High Court shall have jurisdiction, with such exceptions[b] and subject to such regulations as the Parliament prescribes, to hear and determine appeals[c] from all judgments[d], decrees, orders[e], and sentences—

NOTES OF CASES: (a) As to whether this section empowers the High Court to entertain appeals from judgments pronounced before the passing of the *Judiciary Act* see *Hannah* v. *Dalparno*, (1904) 1 C.L.R. 1, 9 A.L.R. (C.N.) 8.

Held by the High Court that it has no jurisdiction to entertain an appeal from a decision of the Supreme Court of a State pronounced before the establishment of the Commonwealth: *Ex parte Yatthes* (1904) 1 C.L.R. 9.

(b) Held by McMillan J. (Supreme Court of Western Australia) that under this section the Parliament of the Commonwealth may enact the provisions contained in the *High Court Procedure Act* 1903, Schedule, Part II., Section IV., No. 9, under which when notice of appeal is given without the leave of the High Court in a case in which an appeal must be brought as of right the Court from which the appeal is proposed to be brought or a Judge thereof may set aside the notice: *Milne* v. *James* (1910) 12 W.A.L.R. 111, at p. 115.

Held by the High Court (Isaacs, Higgins, Gavan Duffy, Powers and Rich JJ., Griffith C.J. and Barton J. dissenting) that the provision contained in s. 38A (4) of the *Commonwealth Conciliation and Arbitration Act* 1904–1911, that the decision of a Judge of the High Court under that section is not to be subject to any appeal to the High Court in its appellate jurisdiction is an exception from that jurisdiction within the meaning of s. 73 of the Constitution, and that the whole section is a valid exercise of the legislative power of the Parliament of the Commonwealth: *Federated Engineers and Firemen's Association of Australasia* v. *Colonial Sugar Refining Co. Ltd.* (1916) 22 C.L.R. 103; 22 A.L.R. 328.

Held by the High Court (Griffith C.J., Barton, Isaacs, Higgins and Powers JJ., Rich J., doubting) that the provision in clause 2 of the Second Schedule to the *Commonwealth Workmen's Compensation Act* 1912, that the decision of a County Court shall be final unless within a prescribed time either party appeals to the High Court or the Supreme Court of the State is an exception from the appellate jurisdiction of the High Court within the meaning of section 73, and therefore to appeal having been brought within the prescribed time the High Court has no jurisdiction to grant special leave to appeal from such a decision: *R.* v. *Murray and Cormie*; *Ex parte the Commonwealth* (1916) 22 C.L.R. 437, 22 A.L.R. 418.

As to whether Parliament may under this section prescribe exceptions to the exercise by the High Court of prohibition to the Commonwealth Court of Conciliation and Arbitration see *R.* v. *Commonwealth Court of Conciliation and Arbitration*; *Ex parte Whybrow & Co.* (1910) 11 C.L.R. 1, 16 A.L.R. 373.

Held by the High Court that the Parliament may not prescribe exceptions to the exercise by the High Court of prohibition to the Commonwealth Court of Conciliation and Arbitration as the grant of prohibition is an exercise of original not appellate jurisdiction: *R.* v. *Commonwealth Court of Conciliation and Arbitration and Australian Tramway Employees' Association* (1913) 18 C.L.R. 54, 20 A.L.R. 126.

Per Higgins J.: No exceptions or regulations within the meaning of this section can be sanctioned unless they are made by the Parliament: *Ball* v. *Ex parte King Bon and Wah On*, (No. 1) (1927) 9 C.L.R. 74, at p. 262; 34 A.L.R. 100, at p. 107.

(c) *Per* Barton J.: It is only by virtue of this section that appellate jurisdiction exists in the High Court over the original jurisdiction of the Court in the matters specified in ss. 75 and 76: *Ah Yuk* v. *Lehmert* (1905) 2 C.L.R. 655, at p. 672; 11 A.L.R. 506, at p. 511.

Per Isaacs J.: The powers granted to the High Court in this section are those of a general Court of Appeal and of Court of Error: *Lloyd* v. *Wallach* (1915) 20 C.L.R. 299, at p. 307; 21 A.L.R. 353, at p. 356; 1915 A.C. 549, at p. 559.

As to the principles on which leave to appeal should be granted in criminal cases, see *Ross* v. *The King*, (1922) 30 C.L.R. 246, 28 A.L.R. 138.

Per Isaacs J.: The appellate jurisdiction of the High Court as set out in this section cannot be enlarged: *Cooper Hudson Ltd.* v. *Australian Timber Workers' Union* (1923) 32 C.L.R. 413, at p. 430, 30 A.L.R. 1, at p. 20.

As to the invalidity of s. 51 of the *Income Tax Assessment Act* 1922–1923—which provides *inter alia* that an appeal lies to the High Court "in its appellate jurisdiction" from orders made by a Board of Appeal (which is not a Court): see *British Imperial Oil Co. Ltd.* v. *Federal Commissioner of Taxation*, (1925) 35 C.L.R. 422, 31 A.L.R. 129.

As to whether the appellate power of the High Court is confined to appellate power within the meaning of this section or whether it may be extended by Parliament to revision of administrative decisions, see *Federal Commissioner of Taxation* v. *Munro*; *British Imperial Oil Co. Ltd.* v. *Federal Commissioner of Taxation*, (1926) 38 C.L.R. 153, at p. 174; 32 A.L.R. 339, at p. 347.

Held by the High Court that, in the case of an appeal to the High Court from a conviction the question under the appellate power is whether the conviction was, on the evidence before the lower Court in accordance with the law as then existing *Victorian Stevedoring and General Contracting Co Pty Ltd and Meakes* v *Dignan*, (1931) 46 C L R 73, 38 A L R 22

(*d*) **Meaning of "judgments"** discussed *Musgrave* v *McDonald* (1905) 3 C L R 132, 12 A L R 49

Held by the High Court (Griffith, *C J*, Gavan Duffy and Rich *JJ*) that although under this section the High Court has jurisdiction to entertain an appeal from a judgment discharging an accused person, the section does not confer jurisdiction on the High Court to set aside a verdict of "not guilty." Held also that a direction by a Judge to a jury to find a verdict of not guilty is not a "judgment" from which under this section an appeal lies to the High Court *R* v *Snow*, (1915) 20 C L R 315, 21 A L R 382

Held by the High Court that an order of the Full Court of the Supreme Court of Queensland declaring that the appellant—who had presented a commission and had asked to be sworn in as a Judge of the Supreme Court—was not entitled to be sworn in as and was not eligible to be appointed a Judge of the Supreme Court, was not a judgment within the meaning of this section *In re McCauley*, (1918) 24 C L R 345

As to whether an appeal lies to the High Court under s. 71 of the *Supreme Court Ordinance* 1911-1922 of the Northern Territory—which in terms is similar to that section from a decision of the Supreme Court ordering the discharge of certain persons from custody on the ground that they were unmarried aliens see Hall v J. *Ex parte Kay Bloom and Wah On* (No. 1) (1923) 33 C L R 243, 30 A L R 100

Held by the High Court that a decision of the Supreme Court of New South Wales given after the making of an award by the Workers' Compensation Commission under the *Workers' Compensation Act* 1926 (N.S.W.) is not an advisory or consultative opinion but a final determination of the rights of the parties in the matter and that an appeal will lie therefrom to the High Court *Smith* v *Mann*, (1932) 47 C L R 426, 38 A L R 97

(*e*) Held by the High Court that an order of the Supreme Court of a State re-admitting to practice a solicitor who had been struck off the roll for misconduct is an order from which the High Court has under this section jurisdiction to entertain an appeal *Incorporated Law Institute of N S W* v *Meagher* (1909) 9 C L R (), 16 A L J. 401

As to whether an award of the Commonwealth Court of Conciliation and Arbitration is an "order within the meaning of this section see *Waterside Worker Federation of Australia* v *Alexander*, (1918) 25 C L R 434, at pp. 436, 438, 24 A L J 41 at p. 49 150

Held by the High Court (Isaacs, Rich and Starke *JJ*, Knox *C J* and Gavan Duffy *J* dissenting) that certain orders of the Full Court of the Supreme Court of New South Wales granting leave to the plaintiff to appeal to the Privy Council were an exercise of the judicial power of the Commonwealth, and were therefore "orders" within the meaning of this section from which an appeal would lie to the High Court *Commonwealth* v *Limerick Steamship Co Ltd and Ah Nam* (1924) 34 C L R 69 and 31 A L R 15. (Special leave to appeal from the decision of the High Court in *Commonwealth* v *Adman* refused by Privy Council *Ah Nam* v *Commonwealth* (1926) 2 A L R 1)

(i.) Of any Justice or Justices exercising the original jurisdiction of the High Court.

(ii.) Of any other federal court[a], or court exercising federal jurisdiction[b], or of the Supreme Court of any State[c], or of any other court of any State[d] from which at the establishment of the Commonwealth an appeal lies[e] to the Queen in Council:

NOTES OF CASES (*a*) As to whether the Court constituted of a special Magistrate of the Northern Territory is a Federal Court within the meaning of this section, see *Mitchell* v *Barker*, (1918) 25 C L R 365, 24 A L R 64

In considering whether a Court of a Territory is a "Federal Court" within the meaning of this section, *quære* whether a distinction may be drawn between Courts which have and those which have not, formed part of the Commonwealth *Mitchell* v *Barker*, (1918) 24 C L R 80 at p. 367, 24 A L R 64 at p. 65

Held by the High Court that it has jurisdiction to entertain an appeal from the Central Court of the Territory of New Guinea, that being a "Federal Court" within the meaning of placitum (ii) of this section *Mamaka* v *Custodian of Unappropriated Property* (1924) 34 C L R 297, 31 A L R 1 but see *Porter* v *R. Ex parte Lee* (1926) 37 C L R 432 at pp. 442-443, 32 A L R 144 at pp. 148, 150

Held by the High Court that the Supreme Court of the Northern Territory is not a "Federal Court" within the meaning of placitum (ii) of this section *Lowe* v *Ex parte Lee* (1926) 37 C L R 432 32 A L R 144

Leave to appeal from the Central Court of the Territory of New Guinea refused by High Court, the *Mining Ordinance* 1922-1926 (N.G.) having provided that all orders of the Central Court reversing or varying decisions of the Warden's Court shall be final and conclusive Question as to whether the Central Court is a "Federal Court" within the meaning of this paragraph, discussed by High Court *Bute Creek Pty Ltd* v *Symes*, (1929) 43 C L R 22

(*b*) Held by the High Court that this section imposes no restriction as to amount upon appeals from judgments of the Supreme Courts of the States in the exercise of Federal jurisdiction *Hannah* v *Dalparno*, (1909) 8 C L R 1, 9 A L R (N.S.) 8

Held by the High Court that a New South Wales District Court, in deciding whether a Federal officer is liable to pay State income tax the officer having claimed that he is not liable on the ground that the taxation of his income is an interference with the free exercise of the powers of the Commonwealth, is exercising Federal jurisdiction and that an appeal from such decision lies to the High Court *Baxter* v. *Commissioners of Taxation (N.S.W.)*, (1907) 4 C L R 1087, 13 A L R 313

Held by the High Court that an appeal to the High Court from a decision of a Court of Petty Sessions of Victoria exercising Federal jurisdiction in the case of a civil debt recoverable summarily when the sum involved does not exceed £5 may, under the Rules of the High Court be brought by way of order to

review, notwithstanding that, by s. 21 of the *Justices Act* 1904 (Vict.), in such a case the granting of an order to review is prohibited. *Prentice v. Amalgamated Mining Employees' Association of Victoria and Tasmania*, (1912) 15 C.L.R. 235; 18 A.L.R. 344.

Held by the High Court (Barton, Isaacs, Higgins and Rich, JJ., Gavan Duffy, J., dissenting), that where a State Court of summary jurisdiction not consisting of one of the magistrates specified in s. 39 (2) (d) of the *Judiciary Act* 1903-1915 entertains a matter which is one of Federal jurisdiction, it is exercising, though unlawfully, Federal jurisdiction within the meaning of this section, and an appeal from its decision will lie to the High Court under s. 39 aforesaid. *Troy v. Wrigglesworth*, (1919) 26 C.L.R. 305; 25 A.L.R. 196.

Held by the High Court that the right of appeal given by this section is not limited by Part II. of the *Rules of the High Court* which merely regulates the procedure by which appeals are brought, and therefore, on an appeal from a Court of Petty Sessions of Victoria brought by way of order to review pursuant to rule 1 of section IV. of Part II. of the *Rules of the High Court* the duty of the High Court is to give judgment according to its own opinion in the same manner as on appeals from a Judge of the Supreme Court sitting without a jury. *Bell v. Stewart* (1920) 28 C.L.R. 419; 27 A.L.R. 1.

As to the meaning of the words "Federal jurisdiction" in this section, see *Ferrier v. Carey* (1921) 29 C.L.R. 243, at p. 252; 28 A.L.R. 225, at p. 228.

Question of Court having two jurisdictions, State and Federal, at the same time, discussed by High Court. *Toronto v. Canon*, (1921) 29 C.L.R. 243, at p. 252; 28 A.L.R. 225, at p. 228.

Held by the High Court that it has jurisdiction to entertain an appeal *from a decision of a Court of* Petty Sessions convicting an employer of an offence in that he paid an employee at the minimum wage fixed by an award of the Commonwealth Court of Conciliation and Arbitration by which he was bound and not at a higher rate fixed by a State Wages Board, the decision appealed from arising under the Constitution and involving its interpretation. *H. V. McKay Ltd. v. Hunt* (1920) 27 A.L.R. 309, 32 A.L.R. 413.

Held by the High Court in a case in which an appeal had been brought to the High Court from a Court of Petty Sessions in which had arisen the question whether certain Regulations of the State for preventing collisions at sea were inconsistent with certain similar legislation of the Commonwealth that an appeal from the conviction lay to the High Court under this section, the Court exercising Federal jurisdiction. *Hume v. Palmer* (1921) 30 C.L.R. 441; 31 A.L.R. 66.

As to whether the Supreme Court of the Northern Territory is a Court exercising Federal jurisdiction within the meaning of this section, see *Ball v. Deputy Registrar Bankruptcy (No. 1)* (1917) 40 C.L.R. 240, at p. 261; 24 A.L.R. 100, at p. 110.

Meaning of "Federal jurisdiction" discussed. Le Mesurier v. Connor (1929) 42 C.L.R. 481, at p. 516; 36 A.L.R. 41, at p. 54; 4 A.B.C. 97, at p. 131.

(c) Held by the High Court that an order made by a Judge of the Supreme Court sitting in Chambers in the exercise of the jurisdiction conferred by s. 107 of the *Judges Act* 1900 (N.S.W.) is a judgment of the Supreme Court from which an appeal will lie to the High Court under this section. *Saunders v. Berthelsen* (1914) 18 C.L.R. 731; 19 A.L.R. (N.S.W.) 16.

Held by the High Court that it has jurisdiction to entertain this section to hear an appeal from a judgment of the Supreme Court on an appeal by way of special case notwithstanding that s. 106 of the *Judges Act* 1902 (N.S.W.) provides that on such appeals the judgment of the Supreme Court shall be final and conclusive. *Judges of N.S.W. v. Pankhurst* (1904) 1 C.L.R. 429; 10 A.L.R. (N.S.W.) 60.

Held by the High Court that the words "the Supreme Court of any State" in this section are used to designate that Court which at the time of the establishment of the Commonwealth was in any particular State known by the name of "the Supreme Court" of that State. *Parkinson and Cooper v. Isaacs* (1905) 2 C.L.R. 15; 11 A.L.R. 14.

Held therefore that subject to the conditions mentioned in this section an appeal lies to the High Court from every judgment "which according to the law of a particular State is a judgment" of the Supreme Court of that State. *Ibid.*

Semble an order made in Chambers by a Judge of the Supreme Court of a State, even apart from express legislation in that State, is an order of the Supreme Court of that State within the meaning of this section. *Parkinson and Cooper v. Isaacs*, (1905) 2 C.L.R. 31; 11 A.L.R. 112.

Held by the High Court that an appeal does not lie to the High Court from a verdict of a jury, or from a judgment of the Supreme Court of a State founded upon a general verdict of a jury, except by way of appeal from a decision of the Supreme Court in an application for a new trial. *Musgrave v. McDonald*, (1905) 2 C.L.R. 132; 12 A.L.R. 41.

Held by the High Court that an appeal lies to the High Court direct from the judgment of the Supreme Court of a State founded upon a special verdict of a jury, but the verdict itself cannot be impeached upon the hearing of the appeal which must be considered exclusively upon the facts found and appearing on the record. *Delohaye Shipwrights Provident Union v. Hogan* (1906) 3 C.L.R. 686; 12 A.L.R. 107.

Held by the High Court that where, under the practice of the State Supreme Court, the Judge at Nisi Prius has power after verdict and argument on motion for judgment to draw all necessary inferences of fact not inconsistent with the findings of the jury, and enter judgment for either party, an appeal lies direct to the High Court without the necessity of an intermediate appeal to the Full Court of the State. *Buchanan v. Burns* (1906) 3 C.L.R. 701; 12 A.L.R. 241.

Held by the High Court that the Supreme Court in the exercise of its jurisdiction under the *Electoral Code* 1904 (W.A.) to deal with disputed elections is not the Supreme Court of Western Australia within the meaning of this section, but a special tribunal to whose arbitrament the Parliament has delegated the power of deciding the qualifications of persons to sit in Parliament, and that an appeal does not lie from that tribunal to the High Court. *Helms v. Logan* (1906) 4 C.L.R. 297; 13 A.L.R. 145.

As to whether this section authorizes the Parliament to take away the *right of appeal* from the Supreme Court of a State to the Privy Council given by the Order in Council of 9th June 1860, see *Webb v. Outtrim*, 1907 A.C. 81; 4 C.L.R. 356; 13 A.L.R. (C.N.) 1.

Held by the High Court that it has jurisdiction to entertain an appeal from the Supreme Court of a State in a case of habeas corpus, no exception in such case having been made by the Judiciary Act. *Attorney-General for the Commonwealth v. Ah Sheung*, (1906) 4 C.L.R. 949; 12 A.L.R. 452.

Held by the High Court that the jurisdiction conferred on a Judge of the Supreme Court of Western Australia by the *Land Clauses Consolidation Act* of that State is conferred not upon the Supreme Court but upon a Judge of the Supreme Court as *persona designata* with a right of appeal to the Full Court of the Supreme Court, and therefore that a decision of a Judge exercising the jurisdiction so conferred is not a judgment of the Supreme Court within the meaning of this section. *Macdonald Ltd. v. South Australian Railways Commissioner*, (1911) 12 C.L.R. 221.

Held by the High Court (Griffith, C.J., Barton, Higgins, Gavan Duffy and Rich, JJ., Isaacs and Powers, JJ., dissenting) that where there has been a verdict of a jury in an action in the Supreme Court of a State exercising Federal jurisdiction the High Court has no jurisdiction to entertain the matter either as an appeal or as a motion for a new trial. *Commonwealth v. Brisbane Milling Co. Ltd.* (1916) 21 C.L.R. 559, 22 A.L.R. 272. (NOTE.—This case overrules *Baume v. Commonwealth*, (1906) 4 C.L.R. 97, 13 A.L.R. 22.)

Held by the High Court that the Court of Industrial Arbitration of the State of Queensland, constituted by the Industrial Arbitration Act of 1916 (Q.), is not the Supreme Court of the State within the meaning of this section and therefore no appeal lies from it to the High Court *Mutual Life and Citizens' Assurance Co Ltd v Thiel* (1919) 27 C.L.R. 187.

Held by the High Court that the *Criminal Appeal Act* 1912 (N.S.W.) does not create a new Court, but merely directs that the Supreme Court constituted as therein prescribed shall act as the Court of Criminal Appeal, and that therefore an appeal lies from the Court of Criminal Appeal to the High Court under this paragraph *Stewart v The King*, (1921) 29 C.L.R. 234; 27 A.L.R. 178.

Per Isaacs, *J.* This section draws a very clear distinction between the Supreme Court as the judicial organ of the State, and a State Court as a judicial organ of the Commonwealth *Commonwealth v Kreglinger and Fernau Ltd* and *v Baidsley* (1920) 37 C.L.R. 393 at p. 417; 1926 V.L.R. 331, at p. 352; 42 A.L.R. 161, at p. 178.

Per Isaacs, *J.* An appeal from a State Court exercising State jurisdiction to the High Court is not a rehearing, otherwise the High Court would be invested with original jurisdiction as to State judicial power *Werribee Council v Kerr*, (1928) 42 C.L.R. [illegible] at p. 20.

(d) Application for special leave to appeal to the High Court from a decision of the Court of Mines refused by the High Court on the ground that the applicants had a right of appeal to the Supreme Court of the State and thence to the High Court *Kamarooka Gold Mining Company No Liability v Kerr*, (1908) 6 C.L.R. 255.

(e) Question as to whether the words "an appeal lies" include appeals by special leave, discussed by High Court *Parkin and Cooper v James* (1905) 2 C.L.R. 315; 11 A.L.R. 142; *Kamarooka Gold Mining Company No Liability v Kerr* (1908) 6 C.L.R. 255.

(iii.) Of the Inter State Commission, but as to questions of law only[a]

NOTES OF CASES. (a) As to whether this provision as to appeals lying from the Inter State Commission to the High Court upon questions of law puts the Commission on the same footing as a Court see *New South Wales v Commonwealth* (1915) 20 C.L.R. 54 at pp. 61, 62, 75, 83, 88; 8, 10, 14, 108, 110; 21 A.L.R. 428 at pp. 431, 437, 441, 443, 449, 451.

and the judgment of the High Court in all such cases shall be final and conclusive.[a]

But no exception or regulation prescribed by the Parliament shall prevent the High Court from hearing and determining any appeal from the Supreme Court of a State in any matter[b] in which at the establishment of the Commonwealth an appeal lies[c] from such Supreme Court to the Queen in Council.

Until the Parliament otherwise provides[d], the conditions of and restrictions on appeals to the Queen in Council from the Supreme Courts of the several States shall be applicable to appeals from them to the High Court.

GENERAL NOTES. (d) By the *Judiciary Act* 1903-1934, s. 35 the Parliament has otherwise provided for appeals from the Supreme Courts of the several States to the High Court.

NOTES OF CASES. (a) As to whether the High Court should grant stay of execution in a judgment delivered by it on an appeal from the Supreme Court merely because the Privy Council may grant leave to appeal from the decision of the High Court see *Metal Trades Employers' Association v Amalgamated Engineers' Union*; *Metal Trades Employers' Association v Amalgamated Engineers' Union and Australian Paper Co Ltd v McLaughlin v Vale of Clwydd Coal Mining Co Ltd* (No. 2) (1919) 26 C.L.R. 213 at p. 283; 10 A.L.R. (C.N.) 32 at pp. 33, 34.

As to whether the opinion pronounced by the High Court on a case stated by the Commonwealth Court of Conciliation and Arbitration for the opinion of the High Court is merely consultative or is judicial, see *Federated Engineers and Firemen's Association of Australia v Broken Hill Pty Co Ltd*, (1919) 26 C.L.R. 245 at p. 257; 19 A.L.R. 177 at p. 179.

As to whether a stay of proceedings on a judgment of the High Court pending an application to the Privy Council for special leave to appeal should be granted on the application of the defendant. In a case in which if the stay is not granted the appeal would be rendered nugatory and if the stay is simply granted the whole benefit of the action might be lost to the plaintiffs see *Marconi's Wireless Telegraph Co Ltd v Commonwealth* (No. 3) (1913) 16 C.L.R. 544.

A obtained a judgment of the High Court declaring him absolutely entitled to certain land in the possession of B. Upon A bringing in the Supreme Court an action of ejectment, B was granted a stay on the ground that the decision of the High Court was wrong and that he was taking steps to apply to the Privy Council for special leave to appeal to the Privy Council. The High Court discharged the stay, holding that its decision in the previous case was final and conclusive except so far as special leave might be granted under s. 74. *McBride v Sandland* (No. 2) (1918) 25 C.L.R. 369, 25 A.L.R. 54.

(b) **Held by the High Court** (Knox, *C.J.*, Gavan Duffy, Powers, Rich and Starke, *JJ.*, Higgins, *J.*, dissenting) **that the word "matter" in this section involves some right, privilege or protection given by law, or the prevention, redress or punishment of some act inhibited by law** *In re the Judiciary and Navigation Acts*, (1921) 29 C.L.R. 257, 27 A.L.R. 193. See also *In re Judiciary and Navigation Acts*, (1923) 32 C.L.R. 455.

(c) **Question as to whether the words "an appeal lies" include appeals by special leave, discussed by High Court** *Kamarooka Gold Mining Company No Liability v Kerr*, (1908) 6 C.L.R. 255.

Held by the High Court that the words "no exception or regulation . . . Queen in Council" include matters in which an appeal then lay either with or without special leave of the Privy Council *Parkin and Cooper v James*, (1905) 2 C.L.R. 315; 11 A.L.R. 142.

Appeal to Queen in Council.

▼ **74**[a] [b]. No appeal shall be permitted to the Queen in Council from a decision of the High Court upon any question[c], howsoever arising, as to the limits inter se of the Constitutional powers of the Commonwealth and those of any State or States[d], or as to the limits inter se of the Constitutional powers of any two or more States, unless the High Court[e] shall certify that the question is one which ought to be determined by Her Majesty in Council.[1]

The High Court may so certify if satisfied that for any special reason[f] the certificate should be granted[g], and thereupon an appeal shall lie to Her Majesty in Council on the question without further leave.

Except as provided in this section, this Constitution shall not impair any right which the Queen may be pleased to exercise by virtue of Her Royal prerogative to grant special leave of appeal from the High Court to Her Majesty in Council[h]. The Parliament may make laws limiting the matters[i] in which such leave may be asked,[1] but proposed laws containing any such limitation shall be reserved by the Governor-General for Her Majesty's pleasure.

GENERAL NOTES. (1) For list of cases in which applications were granted or refused by the High Court under this section, or questions were raised by or before the Privy Council as to whether certificates (not having been granted by the High Court) were necessary under this section, see note (*b*) of Notes of Cases hereunder.

(1) Up to the date of the preparation of this volume, no laws limiting the matters in which leave may be asked had been made in pursuance of this paragraph.

NOTES OF CASES. (*a*) As to whether this section authorizes the Parliament to take away the right of appeal from the Supreme Court of a State to the Privy Council given by the Order in Council of 9th June 1860, see *Webb v Outtrim* 1907 A C 81; 4 C L R 356; 13 A L R (C N) 1.

Per Isaacs and Rich JJ. By this section the Constitution places the whole fate of the State Constitutions when they conflict with the Federal Constitution in the hands of the High Court that Court's decision being final unless it grants a certificate. *Waterside Workers' Federation of Australia v J W Alexander Ltd* (1918) 25 C L R 434, at p 461; 24 A L R 241.

As to whether this section applies to a decision of the High Court in its original jurisdiction as well as to one in its appellate jurisdiction, see *In re the Judiciary and Navigation Acts* (1921) 29 C L R 433.

Held by the High Court that in view of the provisions of s 73 and this section, the Orders in Council relating to the granting of leave to appeal from decisions of the Supreme Court of a State to the Privy Council do not apply to cases in which the Supreme Court was exercising Federal jurisdiction. *Commonwealth v Inverell Shire Council and Kidman* (1924) 35 C L R 69, at pp 94, 107, 109, 115, 117; 31 A L R 1, at pp 160, 161, 165. (See as to leave to appeal from the decision of the High Court in *Commonwealth v Kidman* refused by Privy Council *Kidman v Commonwealth*, (1925) 32 A L R 1.)

Discussion as to the power of the High Court under this section as the final arbiter in constitutional questions. *Ex parte McLarty* (1925) 36 C L R 170, at p 191; 31 A L R 385, at p 475.

Scheme by which Parliament has provided in the *Judiciary Act* 1903-1920 that all cases falling within the first paragraph of this section shall be determined by the High Court discussed by High Court. *Ex parte Walsh and Johnson; In re Yates*, (1925) 37 C L R 36, at p 48; 32 A L R 46, at p 56; *James v South Australia* (1927) 40 C L R 1, at p 35; 34 A L R 34, at pp 144, 145.

Per Isaacs J. The Commonwealth should be represented in applications under this section. *Ex parte Nelson (No 2)* (1929) 42 C L R 209, at p 230; 3 A L R 177, at p 180.

(*b*) The High Court has granted a certificate under this section in the following case, the certificate being a limited one. *Colonial Sugar Refining Co Ltd v Attorney-General of the Commonwealth*, (1912) 15 C L R 182, at pp 233, 234; 18 A L R 306, at p [illegible].

The High Court has refused to grant certificates under this section in the following cases:

Murray & Co v Collector of Customs (1903) 1 C L R 25, at p 38 (case did not fall within the section).

Municipal Council of Sydney v Commonwealth (1904) 1 C L R 208, at p 242; 10 A L R (C N) 29 (No special reason shown there not appearing in this case any reasonable ground for disputing the correctness of the judgment of the High Court).

Deakin v Webb; *Lyne v Webb* (1904) 1 C L R 585, at pp 619-21; 10 A L R 258 (No "special reason" shown. For reasons which were advanced in this case see note on this case in paragraph (*f*) *infra*, p 68).

Baxter v Commissioners of Taxation (N S W) (1907) 4 C L R 1087, at p 1177; 13 A L R 348, at p 352 (No special reasons shown. For reasons advanced see note on the case of *Flint v Webb* in paragraph (*f*) *infra*, p 68). Special leave to appeal subsequently refused by Privy Council. *Commissioners of Taxation (N S W) v Baxter* 1908 A C 214; 5 C L R 398.

Flint v Webb (1907) 4 C L R 1178; 13 A L R 348 (No "special reasons" shown. For reasons advanced see note on this case in paragraph (*f*) *infra*, p 68). Special leave to appeal subsequently refused by Privy Council. *Webb v Flint* 1908 A C 214; 5 C L R 398.

Jones v Commonwealth Court of Conciliation and Arbitration (Application for certificate refused by High Court without assigning any reason). *R v Commonwealth Court of Conciliation and Arbitration and the Australian Builders' Labourers' Federation; Ex parte Jones*, (1914) 21

A L R 18) Special leave to appeal subsequently refused by Privy Council *Jones v Commonwealth Court of Conciliation and Arbitration* 1917 A C 728, 24 C L R 396 23 A L R 387

Amalgamated Society of Engineers v Adelaide Steamship Co Ltd (1921) 29 C L R 406 (Grounds for refusal not stated Special leave to appeal subsequently refused by Privy Council *Minister for Trading Concerns for the State of Western Australia v Amalgamated Society of Engineers*, 1923 A C 170)

Ex parte Nelson, (1929) 42 C L R 258, 35 A L R 177 (Held by Knox C J Isaacs Gavan Duffy and Starke JJ that no special reasons had been shown Held by Rich and Dixon JJ (*contra* by Isaacs and Starke JJ) that the decision of the Court under s 92 did not involve an *inter se* question)

New South Wales v Commonwealth (No 2) (1932) 46 C L R 235 (Certificate refused by Gavan Duffy C J Rich Starke Dixon and McTiernan JJ Evatt J dissenting, the majority holding that the question in issue required an immediate and a final decision)

Cox v Journeaux (1934) 52 C L R 282 (In this case the Court decided not to deal with the applicant on for a certificate for leave to appeal to the Privy Council)

In the following cases in which certificates had not been granted by the High Court questions were raised as to the necessity for a certificate of the High Court under this section and the Privy Council dealt with the appeals in the following manner

Commissioners of Taxation (N S W) v *Baxter* and *Webb v Hunt* 1908 A C 514 5 C L R 808 (Petitions for special leave to appeal refused the amount at stake being inconsiderable and the controversy having been closed an Act of the Parliament of the Commonwealth having been passed expressly empowering the States to impose taxation of the kind in question)

Attorney General for New South Wales v Collector of Customs for New South Wales 1909 A C 34 (Petition for special leave to appeal refused on the ground that the case came within s 74 and the High Court had not certified under that section)

Jones v Commonwealth Court of Conciliation and Arbitration 1917 A C 728 24 C L R 396 3 A L R 98 (Appeal dismissed as incompetent the question being an *inter se* question)

Minister for Trading Concerns for the State of Western Australia v Amalgamated Society of Engineers 1923 A C 170 (Special leave to appeal refused by Privy Council the Attorney General of the Commonwealth (who intervened by leave) contending that the appeal was not competent in the absence of a certificate under s 74)

(*c*) Distinction between question in this section and matters and matter in ss 75 and 76 respectively discussed by High Court *Tarry v McFarlane* (1925) 36 C L R 170 at p 198 31 A L R 365 at p 376

(*d*) Held by the High Court that the question whether under the third paragraph of s 95 of the Constitution goods imported into Western Australia are liable to duty at the rates imposed by the Western Australian tariff where that tariff is higher than the Commonwealth tariff is not a question as to the limits *inter se* of the constitutional powers of the Commonwealth and those of a State within the meaning of this section *Muir and Co v Collector of Customs* (1911) 13 C L R 25 at p 38

Held by the High Court that the question of the liability of a Commonwealth officer to an income tax imposed by a State Act in respect of his salary as such officer is a question as to the limits *inter se* of the constitutional powers of the Commonwealth and those of a State within the meaning of this section and therefore the decision of the High Court as to such liability is final and conclusive unless the Court certifies that the question is one which ought to be determined by His Majesty in Council *Deakin v Webb Ex parte Hall* (1904) 1 C L R 585 10 A L R

Held by the High Court that the question raised by the defence filed by a Federal officer that he was not liable to pay State income tax on his salary as a Federal officer or that the grounds that such taxation of his income would be an interference with the free exercise of the powers of the Commonwealth was a question as to the limits *inter se* of the constitutional powers of the Commonwealth and a State within the meaning of this section *Baxter v Commissioners of Taxation* (N S W) (1907) 4 C L R 1087, 13 A L R 313

S 49 of the *Factories Act* 1904 (W A) makes it an offence to employ in a factory in Western Australia a Chinese who was not so employed on or before 1st November 1903 Held that a question as to the validity of this section on the ground of discrimination contrary to s 117 was not a question as to the *limits inter se of the constitutional powers of the Commonwealth and the States Lee Kun v Vincent* (1908) 7 C L R 389 15 A L R 33)

Held by the Privy Council that a decision by the High Court that a particular dispute was a dispute extending beyond the limits of one State and that in respect of it the President of the Commonwealth Court of Conciliation and Arbitration had under valid legislation of the Commonwealth jurisdiction to make an award is a decision upon a question as to the limits *inter se* of the constitutional powers of the Commonwealth and those of the States and therefore under this section of the Constitution the Privy Council has no jurisdiction to entertain an appeal from such a decision in the absence of a certificate by the High Court pursuant to this section *Jones v Commonwealth Court of Conciliation and Arbitration* 1917 A C 528, 24 C L R 396, 23 A L R 387

Held by the High Court that a question arises as to the limits *inter se* of the constitutional powers of the Commonwealth and those of a State within the meaning of s 40A of the *Judiciary Act* 1903–1920 in cases in which a decision upon either of the following questions is required for the determination of the case (*a*) Whether such a State Act as the *Motor Car Act* 1911 (Vict) binds persons who are also officers of the defence force of the Commonwealth and (*b*) Whether the provision of s 40A of the *Judiciary Act* 1903–1920 ousting the jurisdiction of the State Courts and removing the cause to the High Court, is effective *Tarry v McFarlane* (1925) 36 C L R 170 31 A L R 365

An action was brought against the Commonwealth in the Supreme Court of Victoria and judgment was given for the Commonwealth On appeal to the Full Court of the Supreme Court by the plaintiff a contention was raised by the Commonwealth that under s 39 (2) (*a*) of the *Judiciary Act* 1903–1920 the only right of appeal was to the High Court The Full Court of the Supreme Court holding that the section in question was invalid rejected the contention and then heard the appeal and dismissed it The Full Court, later, granted leave to the plaintiff to appeal to the Privy Council On appeal to the High Court from the order granting leave to appeal to the Privy Council it was held by the High Court (Knox C J, Isaacs, Gavan Duffy Powers and Rich JJ Higgins J dissenting) that on the hearing of the appeal to the Full Court a question arose as to the limits *inter se* of the constitutional powers of the Commonwealth and those of the State of Victoria *Commonwealth v Kreglinger and Fernau Ltd and v Hardeley* (1926) 37 C L R 393 1926 V L R 331 42 A L R 701

Held by the High Court that an application for a certificate under this section in the case of *Ex parte Nelson (No 1)*, (1928) 42 C L R 209 35 A L R 1, should be refused *Ex parte Nelson* (No 2) (1929) 42 C L R 258, 35 A L R 177

were as to Higgins, Gavan Duffy and Rich, *JJ* that the Commonwealth was not, within the meaning of this paragraph a 'party' to the proceedings for prohibition, and as to Isaacs, *J* that though the Commonwealth was a 'party' it had no sufficient interest in the subject-matter of the excess of jurisdiction. *R.* v. *Murray and Cormie Ex parte the Commonwealth*, (1916) 22 C.L.R. 437, 22 A.L.R. 413.

Held by the High Court (Knox *C.J.*, Isaacs, Rich and Starke *JJ.*) that the High Court has jurisdiction to entertain an action for a tort brought by the Commonwealth against a State without the consent of that State such jurisdiction being conferred by this paragraph *Commonwealth* v *New South Wales*, (1923) 32 C.L.R. 200, 29 A.L.R. 289.

(iv.) Between States[a], or between residents[b] of different States[c], or between a State and a resident[d] of another State[d]:

NOTES OF CASES.—(*a*) Held by the High Court that the matters "between States" in respect of which original jurisdiction is conferred by this section in the High Court are matters which are of a like nature to those which can arise between individuals and which are capable of determination upon principles of law, and that the High Court has jurisdiction to entertain an action by one State against another seeking a declaration that certain land adjoining the boundary and in the *de facto* occupation of the latter state formed part of the territory of the former State *South Australia* v *Victoria*, (1911) 12 C.L.R. 667, 17 A.L.R. 206.

(*b*) Held by the High Court that it has no jurisdiction to entertain a suit under this paragraph when it is not established that the parties at the time of the bringing of the action were residents of different States *Dakins* v *Brander* (1911) 13 C.L.R. 436.

As to whether a married woman living in one State whose husband is domiciled elsewhere can be a 'resident' of the State in which she is living within the meaning of this paragraph see *Renton* v *Renton*, 1917 S.A.L.R. 27. Decision reversed by High Court on other grounds *Renton* v *Renton* (1918) 25 C.L.R. 201, 25 A.L.R. 1.

Held by the High Court (Knox, *C.J.*, Higgins and Gavan Duffy *JJ.*, Isaacs and Starke, *JJ.*, dissenting) that the words 'residents' and 'resident' in this paragraph refer to natural persons only and not to artificial persons or corporations *The Australasian Temperance and General Mutual Life Assurance Society Ltd* v *Howe* (1925) 36 C.L.R. 390, 31 A.L.R. 46.

Held by the Supreme Court of Victoria that something more than mere temporary residence of a husband in another State is required to make husband and wife residents of different States within the meaning of this phrase *Coates* v *Coates* 1925 V.L.R. 231, 46 A.L.R. 180, 31 A.L.R. 137.

Decision of the High Court in *Australasian Temperance and General Mutual Life Assurance Society Ltd* v *Howe* that a corporation is not a resident within the meaning of this section followed by Supreme Court of Queensland *City and Suburban Paint and Dairy (Byee) Ltd* v *Gourley Bros Ltd* 1932 St R Qd 213.

Application for reconsideration of the decision in *The Australasian Temperance and General Mutual Life Assurance Society Ltd* v *Howe* refused by High Court which held that two companies concerned in the case were not residents within the meaning of this section and therefore the action could not be maintained against them in the High Court *Cox* v *Journeaux* (1934) 51 C.L.R. 282.

(*c*) Held by the High Court in a case in which a resident of Victoria and a resident of New South Wales commenced an action against a resident of New South Wales that an action instituted in the High Court in which there is on each side of the record a resident of the same State who is a necessary party to the action is not a matter "between residents of different States" within the meaning of this section *Watson and Coffey* v *Cameron* (1928) 40 C.L.R. 146, 34 A.L.R. 44.

(*d*) Held by the High Court that an action might be brought in the High Court under this section by a resident of New South Wales against the State of Victoria for a declaration that money claimed by and paid under protest to the Victorian Commissioner of Taxes as probate duty under the Administration and Probate Act 1915 was not properly payable, and for a refund of the amount so paid *Daly* v *State of Victoria* (1920) 28 C.L.R. 39, 26 A.L.R. 297.

As to an action being brought against a State without its consent by a resident of another State, see *New South Wales* v *Bardolph* (1934) 52 C.L.R. 455, 41 A.L.R. 22.

As to the State being in a different position from that of a subject who is sued for breach of contract, see *New South Wales* v *Bardolph* (1934) 52 C.L.R. 157, at pp. 169, 170, 41 A.L.R. 22 at p. 23.

(v.) In which a writ of Mandamus or prohibition[a] or an injunction is sought against an officer of the Commonwealth[b]: the High Court shall have original jurisdiction

NOTES OF CASES.—(*a*) As to whether prohibition is an exercise of original or appellate jurisdiction see *R* v *Commonwealth Court of Conciliation and Arbitration Ex parte Whybrow & Co* (1910) 11 C.L.R. 1, 16 A.L.R. 37.

Held by the High Court that jurisdiction to issue prohibition to a tribunal acting without or in excess of its jurisdiction is in its nature original and not appellate *R* v *Commonwealth Court of Conciliation and Arbitration and Australian Tramway Employees' Association* (1914) 18 C.L.R. 54, 20 A.L.R. 126.

As to the power of Parliament to assign the prohibition jurisdiction under this paragraph to a single judge, see *Federated Engineedrivers' and Firemen's Association of Australia* v *Colonial Sugar Refining Co Ltd*, (1916) 22 C.L.R. 103, at pp. 115, 120, 22 A.L.R. 128, at pp. 332, 334.

Per Isaacs, Gavan Duffy and Rich, *JJ.*, This paragraph relating to prohibition does not include prohibition to the High Court itself *Federated Engineedrivers' and Firemen's Association of Australasia* v *Colonial Sugar Refining Co Ltd*, (1916) 22 C.L.R. 103, at p. 117, 22 A.L.R. 328, at p. 333.

Per Isaacs, Gavan Duffy and Rich, *JJ.*, The words in s. 21AA of the *Commonwealth Conciliation and Arbitration Act* 1904-1915 declaring that decisions of a single justice of the High Court, under that section, as to the existence of an industrial dispute are not to be subject to prohibition, do not purport to touch the jurisdiction as to prohibition conferred on the High Court by this paragraph *Federated Engineedrivers' and Firemen's Association of Australasia* v *Colonial Sugar Refining Co Ltd*, (1916) 22 C.L.R. 103, at p. 117, 22 A.L.R. 328 at p. 333.

Prohibition directed to the President of the Commonwealth Court of Conciliation and Arbitration refused by the High Court in a case in which, in the view of Griffith *C.J.* and Barton, *J.* the grounds relied on for prohibition were matters of defence on the merits and not a plea to jurisdiction, and, in the view of Isaacs, Gavan Duffy and Rich, *JJ.* a clear case of want of jurisdiction had not been made out: *R. v. President of Commonwealth Court of Conciliation and Arbitration, Ex parte Australian Agricultural Co. Ltd.* (1916) 22 C.L.R. 261; 22 A.L.R. 355.

Held by the High Court (Knox, *C.J.*, Gavan Duffy and Starke, *JJ.*, Isaacs, Higgins and Rich, *JJ.*, dissenting) that in a case in which one Charles Hibble, who was the Chairman of a special tribunal constituted under the *Industrial Peace Act* 1920, had made what purported to be an award, a writ of prohibition should issue to Hibble directing him not to proceed further with the alleged award: *R. v. Hibble, Ex parte Broken Hill Proprietary Co. Ltd.* (1920) 28 C.L.R. 456; 27 A.L.R. 84. Question whether a writ of prohibition will lie to a tribunal which is *functus officio* discussed: *Ibid.*

Held by the High Court that a writ of prohibition does not lie to a Board constituted under s. 8A of the *Immigration Act* 1901-1920, the Board not being a Court or judicial tribunal: *R. v. Macfarlane; Ex parte O'Flanagan and O'Kelly* (1923) 32 C.L.R. 518; 29 A.L.R. 353.

Held by the High Court (Knox, *C.J.*, Gavan Duffy and Starke, *JJ.*, Isaacs and Rich, *JJ.*, dissenting) that the High Court has jurisdiction under para. (v.) of this section to issue prohibition to the President of the Commonwealth Court of Conciliation and Arbitration where an award has been made by him without jurisdiction: *Waterside Workers' Federation of Australia v. Gilchrist Watt and Sanderson Ltd.* (1924) 34 C.L.R. 482; 30 A.L.R. 402.

Distinction drawn by the High Court between cases in which a summons under s. 44A of the *Commonwealth Conciliation and Arbitration Act* 1904-1918 was taken out by certain employers to determine whether an award was binding on certain employees, and cases under the prohibition power contained in this paragraph: *Amalgamated Engineering Union v. Alderdice; Ex parte Ltd.; In re Metropolitan Gas Co.* (1928) 41 C.L.R. 402 at p. 423; 34 A.L.R. 401 at p. 408.

(*b*) Reason for insertion of this paragraph discussed by High Court: *Huddart Parker & Co. v. Moorehead* (1909) 8 C.L.R. 330 at pp. 368, 369; 11 A.L.R. 206 at p. 211.

Held by the High Court that the Governor-General is not in respect of the power conferred upon him by section 12 of the Constitution an officer of the Commonwealth within the meaning of this paragraph: *R. v. The Governor of the State of South Australia* (1907) 4 C.L.R. 1497; 14 A.L.R. 95.

Held by the High Court that the jurisdiction conferred by this section has not been excluded by the *Judiciary Act* 1903, s. 3: *Ibid.*

As to the power of the High Court under this section to issue prohibition to the Commonwealth Court of Conciliation and Arbitration and as to the meaning of the words "officer of the Commonwealth", see *R. v. Commonwealth Court of Conciliation and Arbitration; Ex parte Whybrow & Co.* (1910) 11 C.L.R. 1; 16 A.L.R. 273.

Held by the High Court that the words "officer of the Commonwealth" include judicial officers of the Commonwealth properly so called, and the return includes the President of the Commonwealth Court of Conciliation and Arbitration: *R. v. Commonwealth Court of Conciliation and Arbitration; Ex parte Australian Iron and Steel Employees' Association* (1911) 13 C.L.R. 423; 17 A.L.R. 116. (This judgment was delivered before the Commonwealth Court of Conciliation and Arbitration was constituted of Judges appointed for life.)

Held by the High Court (Isaacs, Higgins, Gavan Duffy and Rich, *JJ.*, Griffith, *C.J.*, and Barton, *J.*, dissenting) that a Judge of an inferior Court of a State invested with and purporting to exercise federal jurisdiction is not an officer of the Commonwealth within the meaning and for the purposes of this paragraph: *R. v. Murray and Cormac; Ex parte the Commonwealth* (1916) 22 C.L.R. 437; 22 A.L.R. 413.

76[a] The Parliament may make laws conferring original jurisdiction on the High Court in any matter[1] [b] –

Additional original jurisdiction.

GENERAL NOTES. (1) As to the law by which original jurisdiction has been conferred on the High Court in pursuance of this section, see the Commonwealth legislation opposite s. 76 (*supra*, pp. (xxxviii) (xxxix)).

NOTES OF CASES. (*a*) As to whether the Parliament may confer on the High Court original jurisdiction in other matters than those enumerated in ss. 75 and 76: *per* Griffith, *C.J.*, in *The Huddart Parker & Co. v. Moorehead* (1909) 8 C.L.R. 330 at p. 357; 11 A.L.R. 206 at p. 208.

As to whether s. 75 and this section confer every jurisdiction of offences against the laws of the Commonwealth: *quære*: *The Huddart Parker & Co. v. Moorehead* (1909) 8 C.L.R. 330 at p. 357; 11 A.L.R. 206 at p. 210.

As to the nine classes of matters enumerated in s. 75 and this section being the matters to which the judicial power of the Commonwealth (referred to in s. 77 as "federal jurisdiction") was to extend: see *Baxter v. Commissioners of Taxation (N.S.W.)* (1907) 4 C.L.R. 1087 at pp. 1113, 1130, 1157; 13 A.L.R. 313, at pp. 321, 333.

Held by the High Court that s. 75 and this section comprise all the matters in respect of which original jurisdiction is or may be conferred on the High Court: *R. v. Marlborough Licensing Court; Ex parte Webster & Co. Ltd.* (1919) 27 C.L.R. 249; *In re Judiciary and Navigation Acts* (1921) 29 C.L.R. 257, at p. 265; 27 A.L.R. 193 at p. 194.

Distinction drawn between s. 75 (by which jurisdiction is conferred independently of Parliamentary enactment) and this section (by which jurisdiction is dependent on Parliamentary enactment): *Commonwealth v. New South Wales* (1922) 32 C.L.R. 200 at p. 207; 29 A.L.R. 289 at p. 291.

Per Starke, *J.*: There is no appeal as of right to His Majesty in Council in matters within the original jurisdiction conferred on the High Court in pursuance of this section, but only an appeal as of grace in matters not prohibited by s. 74: *Commonwealth v. Temperal Steamship Co. Ltd.* and *v. Kidman* (1924) 35 C.L.R. 69 at p. 115; 31 A.L.R. 153 at p. 168. (Special leave to appeal from the decision of the High Court in *Commonwealth v. Kidman* refused by Privy Council: *Kidman v. Commonwealth* (1925) 32 A.L.R. 1.)

As to whether the maxim *expressio unius est exclusio alterius* applies to this section so as to prevent the Parliament from conferring other jurisdiction on the High Court, see *Porter v. R., Ex parte Yee*, (1926) 37 C.L.R. 432, at p. 447; 32 A.L.R. 114 at p. 149.

(*b*) Held by the High Court (Knox, *C.J.*, Gavan Duffy, Powers, Rich and Starke, *JJ.*, Higgins, *J.*, dissenting) that the word "matter" in this section involves some right, privilege or protection given by law, or the prevention, redress or punishment of some act inhibited by law: *In re the Judiciary and Navigation Acts* (1921) 29 C.L.R. 257, 27 A.L.R. 193.

Held by the High Court that the word "matters" in this section includes a controversy arising out of an award in an arbitration in a case within the ambit of this section. *Minister for Home and Territories v Smith*, (1924) 35 C L R 120, 31 A L R 74

Distinction between 'matter' in this section and "question' in s 74 discussed *Porter v. McKechnie*, (1925) 36 C L R 170, at p 198, 31 A L R 365, at p 376

A controversy arose between the Commonwealth and a State over the question whether a Court of Marine Inquiry established under the *Navigation Act* 1912–1925 had jurisdiction to inquire into a collision between two steamships owned and registered in one port and engaged solely in trading in a particular port, and not engaged in inter State or foreign trade the place at which the collision occurred being a short distance outside the course ordinarily used by ships engaged in such trade, though the steamships had traversed part of that course shortly before the collision took place As to whether such a controversy is a "matter' within the meaning of s 75 and this section see *R v Turner Ex parte Marine Board of Hobart Tasmania v Commonwealth* (1927) 19 C L R 411 at p 427, 33 A L R 174, at p 178

See also cases on matters under s 75 of the Constitution

(i) Arising[a] under this Constitution, or involving[b] its interpretation[c].

NOTES OF CASES—(a) Meaning of arising discussed by High Court *Australian Commonwealth Shipping Board v Federated Seamen's Union of Australasia* (1925) 36 C L R 442, at p 450, 31 A L R 352, at p 351

(b) Meaning of involving discussed by Full Court of the Supreme Court of Victoria *In re Drew*, 1919 V L R 600 at pp 606 9 612 20 A L R 400 at pp 402 3 404 41 A L T 65 at pp 68 9 70

(c) Held by the High Court that the question whether it is within the competence of a State Parliament to enact certain legislation which had the effect of reversing a decision of the High Court is not a matter arising under the Constitution or involving its interpretation *Hogan v Ochiltree* (1910) 10 C L R 585

Held by the High Court (Isaacs Higgins Gavan Duffy Powers and Rich *JJ* Griffith, *C J* and Barton *J*, dissenting) that the whole of s 21AA of the *Commonwealth Conciliation and Arbitration Act* 1904–1915 which *inter alia* confers jurisdiction on a single Justice of the High Court to determine whether an industrial dispute exists is a valid exercise of the power conferred on the Parliament by paragraphs (i) and (ii) of this section *Federated Engine drivers and Firemen's Association of Australasia v Colonial Sugar Refining Co Ltd* (1916) 22 C L R 103, 22 A L R 328

Held by Barton Isaacs Higgins and Rich *JJ* that where an officer of the Defence Department engaged in the performance of his duties is prosecuted for driving a motor car in a manner dangerous to the public the matter is one which involves the interpretation of the Constitution and is therefore one of Federal jurisdiction *Ex parte Heffernan* (1918) 25 C L R 80, 24 A L R 196

As to States being public litigants under this paragraph see *Griffin v South Australia* (1924) 35 C L R 200 31 A L R 81

Held by the High Court (Knox *C J*, Isaacs Higgins Rich and Starke *JJ*) that s 40 of the *Judiciary Act* 1903 1920 which provides for the removal to the High Court of causes or parts of causes arising under the Constitution or involving its interpretation is a valid exercise of the powers conferred upon the Commonwealth Parliament by this section and s 77 *Ex parte Walsh and Johnson In re Yates* (1925) 37 C L R 36, 31 A L R 46

Held by the High Court that the question of the validity of determinations made pursuant to the Dried Fruits Act (S A) fixing the quantity of dried fruits which might be marketed with the Commonwealth raised an issue directly involving the interpretation and application of s 92 of the Constitution and that the question of the validity of a prohibition of dried fruits pursuant to those Acts also raised an issue directly involving the interpretation of the Constitution *Duncan v South Australia*, (1927) 40 C L R 1, 33 A L R 334

Held by the High Court (Isaacs *J*) that an action brought against the Commonwealth for breach of contract is not a cause arising under the Constitution or involving its interpretation within the meaning of s 40 of the *Judiciary Act* 1903 1920 *Hermann v Commonwealth* (1935) 54 C L R 126, 41 A L R 501

(ii) Arising[a] under any laws made by the Parliament[b].

NOTES OF CASES—(a) Meaning of arising discussed by High Court *Australian Commonwealth Shipping Board v Federated Seamen's Union of Australasia* (1925) 36 C L R 442 at p 450 31 A L R 352, at p 351

(b) *Per* Barton *J* The proceeding under s 68 of the *Commonwealth Conciliation and Arbitration Act* 1904 in a court of summary jurisdiction for the recovery by an organization under that Act of levies and dues due by a member is a matter arising under a law made by the Parliament *Federated Sawmill Timberyard and General Woodworkers Employees Association (Adelaide Branch) v Alexander* (1912) 15 C L R 308 at p 317 19 A L R 22 at p 25

Jurisdiction conferred on the High Court in pursuance of this paragraph in 'trials of indictable offences against the laws of the Commonwealth discussed by High Court *R v Kidman* (1915) 20 C L R. 425, 21 A L R 40)

Per Griffith *C J* The provision in the *Judiciary Act* 1915 amending s 30 of the *Judiciary Act* 1903 by adding words conferring jurisdiction on the High Court "in trials of indictable offences against the laws of the Commonwealth" was passed in intended execution of the power conferred by this paragraph Distinction between 'laws made by the Parliament and "Laws of the Commonwealth' discussed *R. v Kidman*, (1915) 20 C L R 425 at p 438, 21 A L R 40, at p 409

Held by the High Court (Isaacs Higgins Gavan Duffy, Powers and Rich, *JJ*, Griffith, *C J*, and Barton, *J*, dissenting) that the whole of s 21AA of the *Commonwealth Conciliation and Arbitration Act* 1904–1915—which *inter alia* confers jurisdiction on a single Justice of the High Court to determine whether an industrial dispute exists—is a valid exercise of the power conferred on the Parliament by paragraphs (i) and (ii) of this section *Federated Engine drivers and Firemen's Association of Australasia v Colonial Sugar Refining Co. Ltd*, (1916) 22 C L R 103, 22 A L R 328

Held by the High Court that under this paragraph the Parliament may confer upon the High Court original jurisdiction to determine judicially the propriety of ordering security to be given in a case in which

the defendant applies for security for the costs of an action instituted by a writ issued out of the Court of a State, to which writ extra-territorial operation is given in pursuance of placitum (xxiv.) of section 51 *McCheg v New South Wales Mailing Co Ltd*, (1918) 25 C.L.R. 416, 25 A.L.R. 87.

Held by the High Court that a decision by a Court of Requests of Tasmania that a judgment debtor was an employee in the Commonwealth service within the meaning of s. 64 of the *Commonwealth Public Service Act* 1922 was a matter arising under a law made by the Parliament within the meaning of this paragraph *Commonwealth v Cole*, (1923) 32 C.L.R. 602.

Per Isaacs and Rich JJ. The jurisdiction conferred upon the High Court by s. 18 of the *Commonwealth Conciliation and Arbitration Act* 1904-1921 to enjoin any party from committing any breach of the provisions of an award is conferred not by the Constitution directly but by Parliament under this section and must be exercised on the terms and subject to the limitations Parliament has thought fit to declare *Waterside Workers' Federation of Australia v Gilchrist Watt and Sanderson Ltd*, (1924) 4 C.L.R. 482, at p. 511, 30 A.L.R. 402 at p. 416.

As to States being possible litigants under legislation passed under this paragraph and as to the liability of a State to an order for discovery and to the administration of interrogatories, see *Griffin v South Australia* (1924) 35 C.L.R. 200, 31 A.L.R. 81.

As to the validity of secs. 18 and 19 of the *Income Tax Assessment Act* 1922 providing in certain events for an appeal to the High Court and the question whether the appeal in question involves the creation of original jurisdiction see *Federal Commissioner of Taxation v Munro*. *British Imperial Oil Co Ltd v Federal Commissioner of Taxation* (1926) 38 C.L.R. 153, at p. 181, 2 A.L.R. 511, at p. 530.

As to whether the Legislature can invest the High Court with original jurisdiction in respect of the Territory for the Seat of Government and in respect of other matters than those mentioned in secs. 75 and 76, see *Federal Capital Commission v Laverton Building and Investment Co Pty Ltd* (1929) 42 C.L.R. 582.

Held by the High Court that this section authorizes the enactment of s. 5 of the *Financial Agreement Enforcement Act* 1932 which provides a summary method of obtaining a binding and authoritative decision of the amount due and payable by a State under the Financial Agreement *New South Wales v Commonwealth (No. 1)* (1932) 46 C.L.R. 155, at p. 188, 38 A.L.R. 244, at p. 254.

As to whether the High Court has jurisdiction to grant a writ of habeas corpus upon the expiration of a sentence imposed by a New South Wales Court of Quarter Sessions for an indictable offence against a law of the Commonwealth which sentence was, on the appeal of the Attorney-General of the Commonwealth, increased by the Court of Criminal Appeal see *Ex parte Williams* (1931) 51 C.L.R. 545, 40 A.L.R. 422.

(iii.) Of Admiralty and maritime jurisdiction[a]

NOTES OF CASES.—(a) As to whether this paragraph can be regarded as supporting the validity of the *Seamen's Compensation Act* 1909 purporting to regulate interstate trade see *Quick & Garran's Annotated Constitution of the Australian Commonwealth*, p. 555; *Kelly v Wilson* (1910) 11 C.L.R. 689, at pp. 699-703, 17 A.L.R. 410, at pp. 413, 414, 419.

As to the authority under which Admiralty jurisdiction is conferred on the High Court see *John Shary & Sons Ltd v The Katherine Mackall* (1924) 34 C.L.R. 420, at pp. 426, 428, 433, 30 A.L.R. 321, at pp. 324, 326.

As to the extent of the power given to the Parliament by this section to confer Admiralty and maritime jurisdiction on the High Court see *R v Turner; Ex parte Marine Board of Hobart (Tasmania) v Commonwealth*, (1927) 39 C.L.R. 411, at p. 448, 34 A.L.R. 174, at p. 186; *Le Mesurier v Connor* (1929) 42 C.L.R. 481, at p. 507, 36 A.L.R. 81, at pp. 89, 90; [1929] A.C. 97, at p. 122.

(iv.) Relating to the same subject matter claimed under the laws of different States.

77 With respect to any of the matters[a] mentioned in the last two sections the Parliament may make laws— **Power to define jurisdiction.**

NOTES OF CASES.—(a) Held by the High Court (Knox C.J., Gavan Duffy, Powers, Rich and Starke JJ., Higgins, J., dissenting) that the word "matters" in this section involves some right, privilege or protection given by law or the prevention, redress or punishment of some act prohibited by law *In re Judiciary and Navigation Acts* (1921) 29 C.L.R. 257, 27 A.L.R. 193.

See also cases on "matters" and "matter" under ss. 75 and 76 respectively.

(i.) Defining the jurisdiction[a] of any federal court other than the High Court[b]

NOTES OF CASES.—(a) As to the meaning of the terms "jurisdiction" and "federal jurisdiction" in this section, see *Baxter v Commissioner of Taxation (N.S.W.)* (1907) 4 C.L.R. 1087, at pp. 1113, 1142, 12 A.L.R. 313, at pp. 324, 345; *Lorenzo v Carey*, (1921) 29 C.L.R. 243, at p. 252, 27 A.L.R. 225, at p. 228.

(b) Held by the High Court that the federal jurisdiction which the Parliament is by this paragraph authorized to confer upon federal courts other than the High Court includes both original and appellate jurisdiction *Ah Jack v Lehmert* (1905) 2 C.L.R. 593, 11 A.L.R. 306; *New South Wales v Commonwealth* (1915) 20 C.L.R. 54, at p. 90, 21 A.L.R. 128, at p. 144.

Per Isaacs, J.: If s. 101 of the Constitution relating to the powers of *adjudication* and administration of the Interstate Commission confers judicial powers on the Commission, that section combined with this section would confer on the Commission power to try criminal cases *New South Wales v Commonwealth*, (1915) 20 C.L.R. 54, at p. 93, 21 A.L.R. 128, at p. 145.

(ii.)[a] Defining the extent to which the jurisdiction[b] of any federal court[c] shall be exclusive of that which belongs to[d] or is invested in[d] the courts of the States:

NOTES OF CASES (a) *Per* Higgins *J* The Parliament cannot under this provision exclude the King in Council from federal jurisdiction *Baxter v Commissioners of Taxation* (N S W) (1907) 4 C.L.R 1087, at p 1163 13 A L R 313 at p 342

(b) As to the meaning of the terms "jurisdiction" and "federal jurisdiction" in this section, see *Baxter v Commissioners of Taxation* (N S W) (1907) 4 C L R 1087, at pp 1113, 1142, 18 A L R. 313, at pp 324 331 *Lorenzo v Carey* (1921) 29 C L R 243 at p 252 27 A L R 225 at p 229 See also cases cited in note (*b*) on page 61 *supra*

Per Isaacs *J* The jurisdiction referred to in this paragraph includes appellate as well as original jurisdiction *George Hudson Ltd v Australian Timber Workers Union* (1923) 32 C L R 413, at p 429, 30 A L R 13, at p 19

(c) Held by the High Court that federal court in this paragraph includes the High Court *Parry v McFarlane* (1926) 38 C L R 170, 31 A L R 36

As to the power of the Commonwealth under this paragraph to make the appellate jurisdiction of the High Court exclusive of the appellate jurisdiction of the State Supreme Courts in matters of federal jurisdiction see *Flint v Webb* (1907) 4 C L R 1148 at pp 1157 1161 19 A L R 348, at pp 349 362

Held by the Privy Council that assuming s 39 (2) of the *Judiciary Act* 1903 (enacted in pursuance of s 77 (ii)) is valid it is not retrospective *Colonial Sugar Refining Co v Irving* 1905 A C 369 affirming *Colonial Sugar Refining Co v Irving* 1904 St R Qd 18

As to the validity of s 39 (2) (*a*) of the *Judiciary Act* 1903 see *In re the Income Tax Acts Outtrim's case* 1905 V L R 469 11 A L R 117 26 A L J 198 and on appeal to the Privy Council *Webb v Outtrim* 1907 A C 81 4 C L R 356 13 A L R (N S) 1

Per Isaacs, Powers and Rich *JJ* This paragraph authorizes the enactment of s 40A of the *Judiciary Act* 1903 1915 by which matters are removed out of the Supreme Court of a State to the High Court *Joseph v Colonial Treasurer* (N S W) (1918) 25 C L R 32 at p 49 24 A L R 185 at p 191

Held by the High Court that under this paragraph the Parliament of the Commonwealth has power to invest the Courts of the States with federal jurisdiction to determine judicially the propriety of ordering security to be given in a case in which the defendant applies for security for the costs of an action instituted by a writ issued out of the Court of a State to which writ extra-territorial operation is given in pursuance of placitum (xxix) of s 51 *Medley v New South Wales Mutual Co Ltd*, (1918) 25 C L R 416, 25 A L R 87

As to whether the Parliament has power to attach conditions to any exclusion effected in pursuance of this paragraph see *Lorenzo v Carey* (1921) 29 C L R 243 27 A L R 225 *Commonwealth v Limerick Steamship Co Ltd* and *v Kelly* (1921) 30 C L R 179 31 A L R 153 (special leave to appeal from the decision of the High Court in *Commonwealth v Limerick* refused by the Privy Council *Kidman v Commonwealth* (1925) 36 C L R 569 *Commonwealth Shipping Commission v Kreglinger and Fernau Ltd* and *v Bardsley* (1926) 37 C L R 393 1926 V L R 331 38 A L R 161

Held by the Supreme Court of Victoria (*Mc Arthur J*) that the Parliament of the Commonwealth cannot deprive the State Courts of their State jurisdiction over matters arising under the laws of that Parliament except by conferring original jurisdiction over such matters upon the Federal Court and making that jurisdiction exclusive of the jurisdiction of the State Courts over such matters under s 77 (ii) of the Constitution *Bell v Stobie-Pine Bros Ltd* 1924 V L R 270 30 A L R 240 46 A L J 8

Held by the High Court that this paragraph coupled with placitum (xxxix) of s 51, is authority for the enactment of s 40A of the *Judiciary Act* 1903-1920 under which causes pending in the Supreme Court of a State and involving questions as to the limits inter se of the constitutional powers of the Commonwealth and one or more States or as to the limits inter se of the constitutional powers of any two or more States are removed to the High Court *Parry v McFarlane* (1926) 38 C L R 170 31 A L R 36

Held by the High Court (Knox *C J* Isaacs Higgins Rich and Starke *JJ*) that s 40 of the *Judiciary Act* 1903-1920—which provides for the removal into the High Court of causes or parts of causes arising under the Constitution or involving its interpretation is a valid exercise of the powers conferred upon the Commonwealth Parliament by s 76 and this section *Ex parte Walsh and Johnson; In re Yates*, (1925) 37 C L R 36 32 A L R 46

(*d*) As to the meaning of the expression "belong to" and "is invested in" see *Baxter v Commissioners of Taxation* (N S W) (1907) 4 C L R 1087 at pp 1112 3 13 A L R 313 at p 335 *In re Drew* 1919 V L R 600 at p 607 25 A L R 100 at p 30 41 A L T 65 at p 68 *George Hudson Ltd v Australian Timber Workers Union* (1923) 32 C L R 413 at p 429 30 A L R 13 at p 19

(iii.) Investing any court of a State with federal jurisdiction[a]

NOTES OF CASES (*a*) Held by the High Court that the federal jurisdiction with which the Parliament is by this section authorized to invest the Courts of the several States includes both original and appellate jurisdiction *Ah Yick v Johnson* (1907) 2 C L R 593 11 A L R 406, *New South Wales v Commonwealth*, (1915) 20 C L R 54 at p 90 21 A L R 126 at p 144

As to the validity of s 39 (2) (*a*) of the *Judiciary Act* 1903 see *In re the Income Tax Acts, Outtrim's case* 1905 V L R 469 11 A L R 117 26 A L J 198 and on appeal to the Privy Council, *Webb v Outtrim* 1907 A C 81 4 C L R 356 13 A L R (N S) 1

Held by Booth *J* (Supreme Court of Western Australia) that it is this section which authorizes the Parliament of the Commonwealth to enact the *High Court Procedure Act* 1903 particularly Rule 9 of Section IV of Part II of the Schedule to that Act which provides that when notice of appeal is given without the leave of the High Court in a case in which an appeal cannot be brought as of right the Court from which the appeal is proposed to be brought or a Judge thereof may set aside the notice *Milne v James* (1910) 12 W A L R 111 at pp 115 6

Manner in which Commonwealth has invested State Courts with federal jurisdiction discussed by the High Court *Commonwealth v Brisbane Milling Co Ltd*, (1919) 27 C L R 559, at p 577, 22 A L R 278

the power to attach conditions to any investiture of jurisdiction under this paragraph, see *Carey*, (1921) 29 C L R 243, 27 A L R 225

the High Court (Isaacs, Rich and Starke, *JJ*) that s 39 (2) (*a*) of the *Judiciary Act* 1903–1920, interpretation, has the effect of excluding an appeal as of right to the Privy Council from a

decision of the Supreme Court of a State exercising federal jurisdiction, and of giving to the High Court jurisdiction to entertain an appeal from such a decision, that, so interpreted, the section in question is a valid exercise of the power conferred by this paragraph Meaning of para (iii) discussed *Commonwealth* v *Limerick Steamship Co Ltd* and v *Kidman* (1924) 35 C L R 69, 31 A L R 158 (special leave to appeal from the decision of the High Court in *Commonwealth* v *Kidman* refused by the Privy Council *Kidman* v *Commonwealth* (1925) 32 A J R 1)

Per Isaacs Rich and Starke *JJ* Section 39 (2) (*a*) of the *Judiciary Act* 1903-1920 is a valid exercise of the power conferred by s 77 (iii) of the Constitution and therefore in a case before the Supreme Court of Victoria in which the Commonwealth was a party the Full Court had no jurisdiction to make an order granting leave to appeal to the Privy Council *Common wealth* v *Kreglinger and Fernau Ltd* and v *Bardsley*, (1926) 37 C L R 399 1926 V L R 341, 32 A L R 161

Per Higgins *J* The Supreme Court of the Northern Territory is invested with federal jurisdiction, not under this paragraph but under s 122 of the Constitution *Wall* v *R* *Ex parte Kung Won and Wah On* (*No* 1) (1927) 39 C L R 245 at p 262 33 A L R 100, at p 107

Held by the High Court (Knox *C J* Rich and Dixon *JJ* Isaacs and Starke *JJ* dissenting) that this paragraph does not enable the Parliament to make a Commonwealth officer a functionary of a State Court and authorize him to act on its behalf and administer part of its jurisdiction *Le Mesurier* v *Connor* (1929) 42 C L R 481 36 A L R 41 1 A B C 97

Held similarly that this paragraph contemplates the selection by the Parliament of an existing judicial organ which depends alike for its structure and its being upon State law and the grant to it of powers of adjudication upon specified subjects of federal jurisdiction *Ibid* Held similarly that s 18 (1) (*b*) of the *Bankruptcy Act* 1924-1928 which provides that the Courts having jurisdiction in bankruptcy shall be such State Courts as are specially authorized by the Governor General by proclamation to exercise that jurisdiction purports to confer upon the Executive Government a discretionary power to authorize any State Court to exercise federal jurisdiction and to withhold or revoke that authority and is not a law investing federal jurisdiction within the meaning of this paragraph and is *ultra vires* and void *Ibid*

Held by the High Court that this paragraph considered with s 51 (xxxix) confers ample power upon the Parliament to bestow upon State Courts all powers appropriate to bankruptcy jurisdiction and all authority incidental to the exercise of such powers including a power enabling such Courts in their bankruptcy jurisdiction to direct and authorize the performance of ministerial acts *Bond* v *George A Bond and Co Ltd and Bond's Industries Ltd* (1930) 44 C L R 11 3 A L R 285 1 A B C 141

As to whether this paragraph in combination with s 51 (xxxix) empowers the Parliament to enact new remedies, or merely to give State Court a federal authority to administer existing remedies see *Williams* v *R* (*No* 2) (1934) 50 C L R 551 at p 5 (see also p 7) 40 A L R 314 at p 316 (see also p 315)

78 [a] The Parliament may make laws conferring rights to proceed against the Commonwealth or a State in respect of matters[b] within the limits of the judicial power

Proceedings against Commonwealth or State

NOTES OF CASES (*a*) *Per* Griffith *C J* This section authorizes the enactment of s 56 of the *Judiciary Act* 1903 under which any person making any claim against the Commonwealth whether in contract or tort may in respect of the claim bring a suit against the Commonwealth in the High Court or in the Supreme Court of the State in which the claim arose *Commonwealth* v *Baume* (1905) 2 C L R 405, at pp 412, 418, 11 A L R 124 at pp 126 128

Held by the High Court that the rights conferred by s 64 of the *Judiciary Act* 1903 enacted in pursuance of this section are rights of procedure *Commonwealth* v *Bourke* (1907) 5 C L R 405 11 A L R 124 Decision followed by Full Court of the Supreme Court of South Australia in *Clutterbuck Brothers* v *Ringwood* 1908 S A L R 130

Per Isaacs *J* This section, coupled with s 75 (iv) negatives the view that there is an implied exception from s 75 (iii) of State instrumentalities as defendants where the Commonwealth is the plaintiff *R* v *Registrar of Titles* (*Vic*) *Ex parte Commonwealth* (1911) 10 C L R 379 at p 388 17 A L R 435 at p 438

Held by Higgins *J* that the High Court has jurisdiction to entertain an action for a tort brought by the Commonwealth against a State without the consent of that State such jurisdiction being conferred by s 56 of the *Judiciary Act* 1903-1920 enacted under the power given by this section *Commonwealth* v *New South Wales*, (1923) 32 C L R 200 29 A L R 289

As to whether this section authorizes the enactment of s 64 of the *Judiciary Act* 1903-1920 which gives the plaintiff the right to obtain discovery of documents from and to administer interrogatories to the defendant and as to whether s 64 applies where the defendant is a State and the plaintiff a resident of another State see *Griffin* v *South Australia* (1924) 35 C L R 200 at pp 205 209 31 A L R 81 at p 82

As to whether Part II of the *Financial Agreements Enforcement Act* 1932 is within the power derived by the Parliament from the operation of this section combined with s 105A (3) see *New South Wales* v *Commonwealth* (*No* 1), (1932) 46 C L R 155 at pp 174 177 180 204 214 225 48 A L R 245 at pp 248 249, 251 260 265 6 270

Per Dixon, *J* The principle that the Attorney General of the Commonwealth or a State is the proper representative of the Commonwealth or the State as the case may be is recognized by ss 61 and 62 of the *Judiciary Act* 1903, enacted by virtue of this section *Tasmania* v *Victoria* (1935) 52 C L R 157 at p 187, 41 A L R 157, at p 167

(*b*) Held by the High Court (Knox, *C J* Gavan Duffy Powers Rich and Starke, *JJ* Higgins, *J*, dissenting) that the word 'matters' in this section involves some right privilege or protection given by law, or the prevention, redress or punishment of some act inhibited by law *In re the Judiciary and Navigation Acts*, (1921) 29 C L R 257, 27 A L R 193

See also cases on "matters" and "matter" under ss 75 and 76 respectively

(ii.)[c] Defining the extent to which the jurisdiction[b] of any federal court[a] shall be exclusive of that which belongs to[d] or is invested in[d] the courts of the States.

NOTES OF CASES.—(a) *Per* Higgins *J* The Parliament cannot under this provision exclude the King in Council from federal jurisdiction *Baxter* v *Commissioners of Taxation* (N S W) (1907) 4 C L R 1087, at p 1163 13 A I R 919 at p 342

(b) As to the meaning of the terms jurisdiction and federal jurisdiction in this section, see *Baxter* v *Commissioners of Taxation* (N S W), (1907) 4 C L R 1087 at pp 1114, 1142 13 A L R 313, at pp 424, 435 *Lorenzo* v *Carey*, (1921) 29 C L R 243 at p 252 27 A I R 225 at p 228 See also cases cited in note (d) on page 61 *supra*

Per Isaacs, *J* The jurisdiction referred to in this paragraph includes appellate as well as original jurisdiction *George Hudson Ltd* v *Australian Timber Workers' Union* (1923) 32 C L R 413, at p 420, 30 A I R 13, at p 19

(c) Held by the High Court that federal court in this paragraph includes the High Court *Parris* v *Mckarlane* (1925) 36 C L R 170, 31 A L R 36)

As to the power of the Commonwealth under this paragraph to make the appellate jurisdiction of the High Court exclusive of the appellate jurisdiction of the State Supreme Courts in matters of federal jurisdiction see *Flint* v *Webb* (1907) 4 C L R 1178 at pp 1187 1193 13 A L R 318, at pp 349 352

Held by the Privy Council that assuming s 39 (2) of the *Judiciary Act* 1903 (enacted in pursuance of s 77 (ii)) is valid it is not retrospective *Colonial Sugar Refining Co* v *Irving* 1904 81 L R Qd 18

As to the validity of s 39 (2) (*a*) of the *Judiciary Act* 1903 see *In re the Income Tax Acts Outtrim's case* 1905 V L R 463 11 A I R 117 26 A L J 198 and on appeal to the Privy Council *Webb* v *Outtrim* 1907 A C 81 4 C L R 356 13 A I R (C N) 1

Per Isaacs Powers and Rich *JJ* This paragraph authorizes the enactment of s 40A of the *Judiciary Act* 1903 1915 by which appeals as of course from the Supreme Court of a State to the High Court *Joseph* v *Colonial Treasurer* (N S W) (1918) 2 C L R 32 at p 49 24 A I R 185 at p 191

Held by the High Court that under this paragraph the Parliament of the Commonwealth has power to invest the Courts of the States with federal jurisdiction and to determine judicially the propriety of ordering security to be given in a case in which the defendant applies for security for the costs of an action instituted by a writ issued out of the Court of a State to which writ extra territorial operation is given in pursuance of placitum (xxiv) of s 51 *McGlew* v *New South Wales Mutual Co Ltd* (1918) 25 C L R 416 25 A I R 87

As to whether the Parliament has power to attach conditions to any exclusion effected in pursuance of this paragraph see *Lorenzo* v *Carey* (1921) 29 C L R 243 27 A I R 225 *Commonwealth* v *Limerick Steamship Co Ltd* and *Kidman* (1924) 35 C L R 69 31 A I R 153 (special leave to appeal from the decision of the High Court in *Commonwealth* v *Kidman* refused by the Privy Council *Arthur* v *Commonwealth* (1925) 32 A I R 1) *Commonwealth* v *Kreglinger and Fernau Ltd* and *Hardaker* (1926) 37 C L R 393 1926 V L R 331 32 A I R 161

Held by the Supreme Court of Victoria (M'Arthur *J*) that the Parliament of the Commonwealth cannot deprive the State Court of their State jurisdiction over matters arising under the laws of that Parliament except by conferring original jurisdiction over such matters upon the federal Court and making that jurisdiction exclusive of the jurisdiction of the State Courts over such matters under s 77 (ii) of the Constitution *Booth* v *Shelmerdine Bros Pty Ltd* 1924 V L R 270 30 A L J 40 40 A I R 8

Held by the High Court that this paragraph coupled with placitum (xxxix) of s 51 is authority for the enactment of s 40A of the *Judiciary Act* 1903 1920 under which causes pending in the Supreme Court of a State and involving questions as to the limits *inter se* of the constitutional power of the Commonwealth and one or more States or as to the limits *inter se* of the constitutional powers of any two or more States are removed to the High Court *Parris* v *Mc Farlane* (1925) 36 C L R 170 31 A I R 36)

Held by the High Court (Knox C J Isaacs Higgins Rich and Starke *JJ*) that s 40 of the *Judiciary Act* 1903–1920 which provides for the removal to the High Court of causes or parts of causes arising under the Constitution or involving its interpretation is a valid exercise of the power conferred upon the Commonwealth Parliament by s 76 and this section *Ex parte Walsh and Johnson In re Yates* (1925) 37 C L R 36, 32 A I R 46

(d) As to the meaning of the expressions belongs to and is invested in see *Baxter* v *Commissioners of Taxation* (N S W) (1907) 4 C L R 1087 at pp 1112 1113 13 A L R 313 at p 335 *In re Drew* 1919 V L R 600 at p 607 25 A I R 400 at p 402 41 A L J 65 at p 68 *George Hudson Ltd* v *Australian Timber Worker's Union* (1923) 32 C L R 413 at p 422 30 A I R 13 at p 19

(iii.) Investing any court of a State with federal jurisdiction[a]

NOTES OF CASES (*a*) Held by the High Court that the federal jurisdiction with which the Parliament is by this section authorized to invest the Courts of the several States includes both original and appellate jurisdiction *Ah Yick* v *Lehmert* (1905) 2 C L R 693 11 A L R 306 *New South Wales* v *Commonwealth*, (1915) 20 C L R 54 at p 90 21 A I R 128 at p 144

As to the validity of s 39 (2) (*a*) of the *Judiciary Act* 1903 see *In re the Income Tax Acts Outtrim's case* 1905 V L R 463 11 A I R 117 26 A L J 198 and on appeal to the Privy Council *Webb* v *Outtrim* 1907 A C 81 4 C L R 356 13 A I R (C N) 1

Held by Booth *J* (Supreme Court of Western Australia) that it is this section which authorizes the Parliament of the Commonwealth to enact the *High Court Procedure Act* 1903 particularly Rule 9 of Section IV of Part II of the Schedule to that Act which provides that when notice of appeal is given without the leave of the High Court in a case in which an appeal cannot be brought as of right the Court from which the appeal is proposed to be brought or a Judge thereof may set aside the notice *Milne* v *James* (1910) 12 W A L R 111 at pp 115 6

Manner in which Commonwealth has invested State Courts with federal jurisdiction discussed by the High Court *Commonwealth* v *Brisbane Milling Co Ltd* (1916) 21 C L R 569, at p 577, 22 A I R 272 at p 278

As to the power to attach conditions to any investiture of jurisdiction under this paragraph, see *Lorenzo* v *Carey*, (1921) 29 C L R 243, 27 A I R 225

Held by the High Court (Isaacs, Rich and Starke, *JJ*) that s 39 (2) (*a*) of the *Judiciary Act* 1903–1920, on its proper interpretation, has the effect of excluding an appeal as of right to the Privy Council from a

decision of the Supreme Court of a State exercising federal jurisdiction, and of giving to the High Court jurisdiction to entertain an appeal from such a decision, that, so interpreted, the section in question is a valid exercise of the power conferred by this paragraph *Meaning of para (iii) discussed* *Commonwealth v Limerick Steamship Co Ltd* and *v Kidman* (1924) 35 C L R 69, 31 A L R 153 (special leave to appeal from the decision of the High Court in *Commonwealth v Kidman* refused by the Privy Council *Kauman v Commonwealth* (1925) 12 A L R 1)

Per Isaacs, Rich and Starke, *JJ* Section 39 (2) (*a*) of the *Judiciary Act* 1903-1920 is a valid exercise of the power conferred by s 77 (iii) of the Constitution and the decision in a case before the Supreme Court of Victoria in which the Commonwealth was a party the Full Court had no jurisdiction to make an order granting leave to appeal to the Privy Council *Commonwealth v Arrigunger and Lennan Ltd* and *v Bardsley*, 1926) 37 C L R 393, 1926 V L R 431, 32 A L R 161

Per Higgins, *J* The Supreme Court of the Northern Territory is invested with federal jurisdiction, not under this paragraph but under s 122 of the Constitution *Wall v R*, *Ex parte Kung Woon and Wah On* (No 1) (1927) 39 C L R 245 at p 262, 33 A L R 100, at p 107

Held by the High Court (Knox, *C J* Rich and Dixon *JJ* Isaacs and Starke *JJ* dissenting) that this paragraph does not enable the Parliament to make a Commonwealth officer a functionary of a State Court and authorize him to act on its behalf and administer part of its jurisdiction *Le Mesurier v Connor* (1929) 42 C L R 481, 36 A L R 41, 1 A B C 97

Held similarly that this paragraph contemplates the selection by the Parliament of an existing judicial organ which depends alike for its structure and its being upon State law and the grant to it of powers of adjudication upon specified subjects of federal jurisdiction *Ibid* Held similarly that s 15 (1) (*b*) of the *Bankruptcy Act* 1924-1928 which provides that the Courts having jurisdiction in bankruptcy shall be such State Courts as are specially authorized by the Governor-General by proclamation to exercise that jurisdiction purports to confer upon the Executive Government a discretionary power to authorize any State Court to exercise federal jurisdiction and to withhold or revoke that authority and is not a law investing federal jurisdiction within the meaning of this paragraph and is *ultra vires* and void *Ibid*

Held by the High Court that this paragraph considered with s 51 (xxxix) confers ample power upon the Parliament to bestow upon State Courts all powers appropriate to bankruptcy jurisdiction and all authority incidental to the exercise of such powers including a power enabling such Courts in their bankruptcy jurisdiction to direct and authorize the performance of ministerial acts *Isond v George A Bond and Co Ltd and Bond's Inlet trust Ltd* (1930) 44 C L R 11, 8 A L R 208, 2 A B C 141

As to whether this paragraph in combination with s 51 (xxxix) empowers the Parliament to enact new remedies, or merely to give State Courts a federal authority to administer existing remedies see *Williams v R (No 2)* (1934) 50 C L R 551 at p 559 (see also p 567) 40 A L R 314 at p 316 (see also p 315)

78 [(*a*)] The Parliament may make laws conferring rights to proceed against the Commonwealth or a State in respect of matters[(*b*)] within the limits of the judicial power

Proceedings against Commonwealth or State

NOTES OF CASES (*a*) *Per* Griffith *C J* This section authorizes the enactment of s 56 of the *Judiciary Act* 1903, under which any person making any claim against the Commonwealth whether in contract or tort may in respect of the claim bring a suit against the Commonwealth in the High Court or in the Supreme Court of the State in which the claim arose *Commonwealth v Baume* (1905) 2 C L R 405, at pp 414-418, 11 A L R 124 at pp 126-128

Held by the High Court that the rights conferred by s 64 of the *Judiciary Act* 1903 enacted in pursuance of this section are rights of procedure *Commonwealth v Baume* (1905) 2 C L R 405 11 A L R 124 Decision followed by Full Court of the Supreme Court of South Australia in *Cliff rink Brothers v King and ors* 1906 S A L R 130

Per Isaacs *J* This section, coupled with s 75 (iv) negatives the view that there is an implied exception from s 75 (iii) of State instrumentalities as defendants where the Commonwealth is the plaintiff *Ex v Registrar of Titles* (Vic) *Ex parte Commonwealth* (1931) 20 C L R 371 at p 388, 21 A L R 435 at p 438

Held by Higgins, *J*, that the High Court has jurisdiction to entertain an action for a tort brought by the Commonwealth against a State without the consent of that State such jurisdiction being conferred by s 56 of the *Judiciary Act* 1903-1920 enacted under the power given by this section *Commonwealth v New South Wales*, (1923) 32 C L R 200, 29 A L R 289

As to whether this section authorizes the enactment of s 64 of the *Judiciary Act* 1903-1920 which gives the plaintiff the right to obtain discovery of documents from and to administer interrogatories to the defendant and as to whether s 64 applies where the defendant is a State and the plaintiff a resident of another State see *Griffin v South Australia* (1924) 35 C L R 200 at pp 205-209, 31 A L R 81 at p 82

As to whether Part II of the *Financial Agreements Enforcement Act* 1932 is within the power derived by the Parliament from the operation of this section combined with s 105A (5) see *New South Wales v Commonwealth (No 1)* (1932) 46 C L R 155 at pp 173 174 180 207-214 5 222, 38 A L R 245 at pp 248, 249, 251, 260 265 6 270

Per Dixon, *J* The principle that the Attorney-General of the Commonwealth or a State is the proper representative of the Commonwealth or the State as the case may be is recognized by ss 61 and 62 of the *Judiciary Act* 1903, enacted by virtue of this section *Tasmania v Victoria* (1935) 52 C L R 157 at p 187, 41 A L R 157, at p 167

(*b*) Held by the High Court (Knox, *C J* Gavan Duffy Powers Rich and Starke, *JJ* Higgins, *J*, dissenting) that the word 'matters' in this section involves some right privilege or protection given by law, or the prevention, redress or punishment of some act inhibited by law *In re the Judiciary and Navigation Acts*, (1921) 29 C L R 257, 27 A L R 193

See also cases on "matters" and "matter" under ss 75 and 76 respectively)

Number of judges

79.[a] The federal jurisdiction of any court may be exercised by such number of judges as the Parliament prescribes.

NOTES OF CASES.—(a) As to the power of the Parliament to prescribe the number of judges by whom invested jurisdiction should be exercised see *Lanier v Commissioners of Taxation* (N S W) (1907) 4 C L R 1086 at p 1141, 13 A L R 513 at p 536 *Lorenzo v Carey*, (1921) 29 C L R 243, 26 p 249 27 A L R 225 at p 228 *Commonwealth v Howard Steamship Co Ltd* and *v Aikman* (1924) 35 C L R 69, at p 102 31 A L R 153 at p 161 (Special leave to appeal from the decision of the High Court in *Commonwealth v Kidman* refused by Privy Council *Adamin v Commonwealth* (1925) 32 A L R 1)

Section cited in support of validity of s 21AA of the *Commonwealth Conciliation and Arbitration Act* 1904 1914 under which a single Justice of the High Court is given jurisdiction to determine *inter alia* whether an industrial dispute exists *Federated Engine Drivers and Firemen's Association of Australasia v Colonial Sugar Refining Co Ltd* (1916) 22 C L R 101 at pp 113 122 3, 22 A L R 328, at pp 331 334)

Per Higgins *J* Under this section Parliament could commit to a single Judge jurisdiction to grant prohibition under s 75 (v) *Federated Engine Drivers and Firemen's Association of Australasia v Colonial Sugar Refining Co Ltd* (1916) 22 C L R 101 at p 120 22 A L R 328 at p 331

Section cited in support of the view that the Parliament of the Commonwealth has not general power to legislate so as to legislate the constitution and the jurisdiction of State Courts *In re Measures v Connor* (1921) 29 C L R 481 at pp 493 498 s also p 511) 35 V L R 41 at pp 45 46 (see also p 51) 1 A B C 37 at pp 112 114 (also p 127)

Section cited in support of validity of s (v) of the *Financial Agreements Enforcement Act* 1932 *New South Wales v Commonwealth* (No 1) (1932) 46 C L R 155, at p 179 48 A L R 245, at p 251

Trial by jury

80. The trial on indictment of any offence against any law of the Commonwealth[a] shall be by jury[b], and every such trial shall be held in the State where the offence was committed, and if the offence was not committed within any State[c] the trial shall be held at such place or places as the Parliament prescribes.

NOTES OF CASES.—(a) Meaning of "law of the Commonwealth" in this section discussed by High Court *R v Brisbane* (1919) 19 C L R 617 21 V L R 86

(b) Held by the High Court that the inquiry authorized by the *Australian Industries Preservation Act* 1906 1907 s 10B is not inconsistent with the right of trial by jury conferred by this section *Huddart Parker & Co Pty Ltd v Moorehead* (1909) 8 C L R 330 15 V L R 211

(c) Question whether offences committed on property acquired by the Commonwealth are committed within the State within the meaning of this section discussed by Full Court of the Supreme Court of New South Wales *R v Bimford* (1901) 1 S R (N S W) 437

Held by the High Court that this section does not restrict the power conferred on the Commonwealth Parliament by s 122 to make laws for the government of a territory whether that power is exercised directly or through a subordinate legislature *R v Bernasconi* (1915) 19 C L R 629 21 A L R 86

As to the application of this section if the Inter State Commission is a federal court see *New South Wales v Commonwealth* (1917) 20 C L R 54 at p 90, 24 A L R 128 at p 144

As to whether this section is a bar to the taking of an appeal to the High Court from a verdict of acquittal by a jury see *R v Snow* (1915) 20 C L R 315 at pp 323 325, 339 341 345 351 2, 358, 365 374 5, 21 A L R 38 at pp 84 386 390 393 397, 400 401

Held by the High Court that the *Crimes Act* 1914 1926 which provides in certain events for trial of offences summarily does not conflict with this section and that Parliament could make the offence under s 30K of the *Crimes Act* 1914 1926 punishable summarily *R v Archdall and Roskruge; Ex parte Carrigan and Brown* (1928) 41 C L R 128 54 A L R 201

CHAPTER IV FINANCE AND TRADE.

CHAPTER IV.—FINANCE AND TRADE.

Consolidated Revenue Fund

81 All revenues or moneys raised or received by the Executive Government of the Commonwealth shall form one Consolidated Revenue Fund, to be appropriated for the purposes of the Commonwealth[a] in the manner and subject to the charges and liabilities imposed by this Constitution[b].

NOTES OF CASES.—(a) Held by the High Court that the Parliament of the Commonwealth has authority to appropriate money out of the Consolidated Revenue for a specific purpose such money being money "appropriated for the purposes of the Commonwealth" within the meaning of this section, and money so appropriated, though not yet actually disbursed, is "expenditure" within the meaning of s 89, and is not "surplus revenue" within the meaning of s 94 until the actual disbursement of it for that purpose is no longer lawful or no longer thought necessary by the Government *New South Wales v Commonwealth* (1908) 7 C L R 179 14 A L R 625 See also *New South Wales v Burdekin*, (1934) M C L R. 455, 41 A L R 22

(b) As to the necessity for Parliamentary authority for the validity of a contract which involves the provision of funds by Parliament, see *The Commonwealth* v *Colonial Combing, Spinning and Weaving Co Ltd*, (1922) 31 C L R 421, at p 448; 29 A L R 138, at p 146

As to whether this section enables the Commonwealth to appropriate moneys for any purpose deemed sufficient by the Commonwealth irrespective of its relation to the legislative and executive authority conferred upon Commonwealth organs by other sections of the Constitution see *Attorney-General for Victoria* v *Commonwealth*, (1935) 52 C L R 533 at pp 559 60 567 8, 41 A L R 246 at pp 261 264—5

82[a] The costs, charges, and expenses incident to the collection, management, and receipt of the Consolidated Revenue Fund shall form the first charge thereon, and the revenue of the Commonwealth shall in the first instance be applied to the payment of the expenditure of the Commonwealth

Expenditure charged thereon

NOTES OF CASES (a) Section cited by High Court in support of the distinction drawn by the Court between 'payment' and 'expenditure' in deciding that the expenditure of the Commonwealth which must be taken into account in determining the surplus revenue of the Commonwealth is not limited to moneys which have actually been paid out *New South Wales* v *Commonwealth* (1908) 7 C L R 179, at pp 194 201 206 14 A L R 1 at pp 30 33 43

83 No money shall be drawn from the Treasury of the Commonwealth except under appropriation made by law[a]

Money to be appropriated by law

But until the expiration of one month after the first meeting of the Parliament the Governor General in Council may draw from the Treasury and expend such moneys as may be necessary for the maintenance of any department transferred to the Commonwealth and for the holding of the first elections for the Parliament

NOTES OF CASES (a) *Per* Griffith C J S 84 of the Constitution operates as a charge upon Commonwealth revenue of a sufficient sum to give effect to the section and is an "appropriation made by law" within the meaning of this section *Isaacs* v *Commonwealth* (1905) 1 C L R 15 at p 22, 9 A L R 274 at p 276 2 A L R 200 at p 204

84.[a] When any department of the public service of a State becomes transferred to the Commonwealth[b], all officers of the department shall become subject to the control of the Executive Government of the Commonwealth.

Transfer of officers

Any such officer who is not retained in the service of the Commonwealth shall, unless he is appointed to some other office of equal emolument in the public service of the State be entitled to receive from the State any pension, gratuity, or other compensation, payable under the law of the State on the abolition of his office

Any such officer who is retained in the service of the Commonwealth shall preserve all his existing and accruing rights[c], and shall be entitled to retire from office at the time, and on the pension or retiring allowance[d], which would be permitted by the law of the State[d] if his service with the Commonwealth were a continuation of his service with the State[e]. Such pension or retiring allowance shall be paid to him by the Commonwealth; but the State shall pay to the Commonwealth a part thereof, to be calculated on the proportion which his term of service with the

State bears to his whole term of service[1], and for the purpose of the calculation his salary shall be taken to be that paid to him by the State at the time of the transfer.

Any officer who is, at the establishment of the Commonwealth, in the public service of a State, and who is, by consent of the Governor of the State with the advice of the Executive Council thereof, transferred to the public service of the Commonwealth, shall have the same rights as if he had been an officer of a department transferred to the Commonwealth and were retained in the service of the Commonwealth

GENERAL NOTES (1) For list of the Departments of State which have been transferred to the Commonwealth see s 69 and notes thereon

NOTES OF CASES (a) Held by the High Court that this section operates as a charge upon the Commonwealth revenue of a sufficient sum to give effect to it and is a sufficient authority to the Executive Government of the Commonwealth to make the necessary payments to the persons entitled to receive them *Lunn v Commonwealth* (1907) 1 C L R 13 7 A L R 254 25 A L J 200

Per Griffith C J s 84 (ii) (a) of the Constitution being a temporary provision must as to cases within s 84 be read as a proviso to s 84 *New South Wales v Commonwealth* (1908) 6 C L R 314, at p 328

As to the extent to which s 67 governs the operation of this section see *Bradshaw v Commonwealth* (1925) 36 C L R 565, 31 A L R 441 *Edwards v Commonwealth* (1911) 54 C L R 13 at p 23 42 A L R 93 at p 95

(b) Held by the High Court that upon the transference of a department of a State to the Commonwealth the rights of the officers of the department are definitely ascertained and settled and an officer in such a department who is retained in the service of the Commonwealth preserves all his "existing and accruing rights" *Lunn v The Commonwealth* (1907) 1 C L R 13 7 A L R 254 25 A L J 200

Held by the High Court that "existing and accruing rights" include a right to be retained in the service at the other existing rate of remuneration until his engagement is terminated or its conditions are varied by a competent authority *Lunn v The Commonwealth* (1907) 1 C L R 13 7 A L R 254 25 A L J 200

Held by the High Court that notwithstanding the provisions of the *Public Service Act* 1900 (Vict) s 19 the Parliament of the Commonwealth may reduce the salaries of officers of Victorian Government Departments transferred with their Departments to the Commonwealth *Commons v Commonwealth* (1908) 5 C L R 709 1 A L R 175

Held by the High Court that the right to a gratuity calculated in accordance with the rate provided by s 40 (d) of the *Public Service Act* 1895 (N S W) is in the case of those officers transferred from the State to the Commonwealth whose service brought them within the provisions of that section an existing or accruing right within the meaning of this section *New South Wales v Commonwealth*, (1908) 6 C L R 314

Quære per Higgins J Whether a gratuity under s 60 (ii) of the *Public Service Act* 1895 (N S W) in the case of the compulsory retirement of an officer transferred to the Commonwealth comes within the provisions for apportionment between State and Commonwealth contained in this section or as to whether the provision as to apportionment is not limited to cases where officers retire voluntarily *New South Wales v Commonwealth* (1908) 6 C L R 314 at pp 340 1

As to whether this section protects from peremptory dismissal an officer of the Department of Defence Tasmania transferred to the Commonwealth with his Department on 1st March 1901 (there being at that time no Public Service Act in Tasmania) see *Ontini v Commonwealth* (1910) 11 Tas L R 110 at p 115

Held by the High Court that under the *Civil Service Act* 1874 (S A) and the *Civil Service Amendment Act* 1881 (S A) age apart from injury was not a ground for removal of an officer of the Civil Service, and an officer having attained the age of sixty five years could not on that ground alone be lawfully retired or removed from office, and that that was an existing right (within s 60 of the *Commonwealth Public Service Act* 1902 1918) which an officer of a Department transferred to the Commonwealth who was retained in the Commonwealth Public Service then enjoyed *Per* Higgins J It was also an existing right within the meaning of s 84 of the Constitution *Le Leu v Commonwealth* (1921) 29 C L R 386, 27 A L R 242

Held by the High Court (Knox C J Higgins and Starke JJ Isaacs J dissenting) that in estimating the damages to which a transferred officer having rights under this section and wrongfully removed from office is entitled the relevant salary is that which he was receiving at the date of his removal and not that which he was receiving at the date when the Department was transferred to the Commonwealth or the maximum salary to which under the law of the State from which he was transferred he could have attained if he had remained in the Public Service of that State *Lucy v Commonwealth*, (1923) 33 C L R 221

As to whether, in the case of a Queensland officer subject to the *Public Service Act* 1896, who is transferred to the Commonwealth Public Service the right to remain in the Public Service until he attains the age of sixty five years is an "existing right" within the meaning of s 60 of the *Commonwealth Public Service Act* 1902 1918, and as to whether the right given by the last mentioned section is a larger right than the right given by s 84 of the Constitution, see *Trower v Commonwealth*, (1924) 34 C L R 587, at p 589

Held by the High Court (Knox C J Rich and Starke JJ, Isaacs and Higgins JJ, dissenting) that in the case of a South Australian officer transferred to the Commonwealth who preserves his existing and accruing rights under this paragraph no "right" (within the meaning of s 84 of the Constitution) to be required to resign before being removed for incapacity was conferred by s 28 of the *Civil Service Act* 1874 (S A) and therefore such an officer might under s 67 of the *Commonwealth Public Service Act* 1922, be removed from the Public Service without first being required to resign *Bradshaw v Commonwealth*, (1925) 36 C L R 565 31 A L R 441

Held by the High Court in the case of a South Australian transferred officer that the chance of promotion from one class to a higher class in the South Australian Civil Service at the time of his transfer, with his Department, to the Commonwealth, was not, having regard to the conditions contained in s 22 of the *Civil Service Act* 1874 (S A) an existing or accruing right of the officer within the meaning of this section. Held also that the fact that such an officer, who was retained in the Public Service of the

Commonwealth and who was then receiving the maximum salary of his class had before his formal classification under the *Commonwealth Public Service Act* 1902 came into operation received from time to time increments to his salary, did not confer any right upon him to continue to receive the increased salary or preclude the Public Service Commissioner from allotting to him any salary so long as it was equal to or greater than that which he was receiving at the date of the transfer *Schedlich v Commonwealth*, (1926) 38 C L R 518, 32 A L R 364

Held by the High Court (Rich Dixon Evatt and McTiernan *JJ*) reversing the decision of Starke *J* that in view of the provisions of this section as to the preservation by a transferred officer of his existing and accruing rights a South Australian transferred officer may not be retired from the service under ss 20 and 29 of the *Commonwealth Public Service Act* 1922-1934 upon the ground that there was employed a greater number of officers of his particular classification than was necessary for the efficient working of that branch but only under s 14 of the *Civil Service Act* 1874 (S A) or the ground that it was necessary to diminish the number of officers in the Department *Bromley v Commonwealth* (1937) 57 C L R 319 42 A L R 95

(c) Held by the High Court that this paragraph relates only to officers in the Public Service of a State who at the time of their transfer to the Public Service of the Commonwealth had rights against the State based on continuous employment in the Public Service of the State from a date prior to the establishment of the Commonwealth *Irvine v Commonwealth* (1934) 51 C L R 85

(f) Held by the High Court (Rich Starke Dixon and Evatt *JJ* McTiernan *J* dissenting) that the words which would be permitted by the law of the State refer to the law of the State in force at the time of the transfer and that an officer who was transferred to the Commonwealth was not entitled to the benefits conferred by a State law passed after his transfer *Teubert v Commonwealth* (1939) 49 C L R 492 49 A L R 282

(e) Held by the High Court that where a Department of the Public Service of a State has been transferred to the Commonwealth this section gives to an officer of the Department who has been retained in the service of the Commonwealth the right on retirement to a pension of the amount to which if he had continued in the service of the State he would have been entitled under the law of the State at the time of his retirement and the amount cannot thereafter be reduced by Commonwealth or State legislation *Flint v Commonwealth* (1940) 63 C L R 476 14 A L R 81

(f) Held (in the case of a New South Wales transferred officer retiring from the Commonwealth during the period while the method of accounting set forth in s 84 was in force) that any gratuity payable to the officer under s 60 (ii) of the *Public Service Act* 1902 is apportionable between the Commonwealth and the State under s 84 of the Constitution the portion payable by the Commonwealth being thereafter chargeable against the State as expenditure in respect solely of the maintenance and continuance of the Department as at the time of transfer *New South Wales v Commonwealth* (1908) 6 C L R 214

85 [a] When any department of the public service of a State is transferred to the Commonwealth— Transfer of property of State

(i.) All property of the State of any kind used exclusively in connexion with the department, shall become vested in the Commonwealth[b] but, in the case of the departments controlling customs and excise and bounties for such time only as the Governor General in Council may declare to be necessary

(ii.) The Commonwealth may acquire any property of the State, of any kind used, but not exclusively used in connexion with the department the value thereof shall, if no agreement can be made, be ascertained in, as nearly as may be, the manner in which the value of land, or of an interest in land, taken by the State for public purposes is ascertained under the law of the State in force at the establishment of the Commonwealth

(iii.) The Commonwealth shall compensate the State for the value of any property passing to the Commonwealth under this section[c], if no agreement can be made as to the mode of compensation, it shall be determined under laws to be made by the Parliament

(iv.) The Commonwealth shall, at the date of the transfer, assume the current obligations[d] of the State in respect of the department transferred

NOTES OF CASES (a) *Per* Latham *CJ* This section does not confer on the Parliament of the Commonwealth power to legislate with respect to the subject-matter with which the transferred Departments deal *R v Brislan Ex parte Williams* (1935) 54 C L R 262 at p 275 42 A L R 45 at p 49

(b) Held by the Full Court of the Supreme Court of New South Wales (Owen and G B Simpson *JJ*, Stephen *J*, dissenting) that, even though under this section, the area upon which a post office is built

is vested in the Commonwealth s 52 of the Constitution does not have the effect of giving the Commonwealth exclusive power to make laws in respect of that area so as to negative the continued application to it of the Postage Act of the State *R v Bamford* (1901) 1 S R (N S W) 337

Held by the Full Court of the Supreme Court of Victoria that this section does not exempt a Commonwealth officer from the payment of State income tax on his official salary earned in any place acquired by the Commonwealth in pursuance of this section *In re Income Tax Acts (No 4), Wollaston's Case,* (1902) 28 V L R 357 at p 391 8 A L R 188 at p 198 24 A L T 63 at p 71

Per Griffith, C J The language of this section expresses accurately and unmistakably the change in constitutional ownership of the property to which the section applies *Municipal Council of Sydney* v *Commonwealth,* (1904) 1 C L R 208, at p 231, (see also *per* Barton *J*, at p 235), 10 A L R (C N) 29

Held by the High Court (Knox *C J* Isaacs and Starke *JJ* and Rich *J* dissenting as to the inclusion of royal metals Higgins *J* that all the lands to which this paragraph applied including the royal metals and other minerals therein vested in the Commonwealth freed and discharged from all reservations rights royalties conditions and obligations of any kind whatsoever to the State, subject to compensation pursuant to paragraph (iii) *Commonwealth* v *New South Wales,* (1923) 33 C L R 1, 29 A L R 401

(*c*) See note on *Commonwealth* v *New South Wales,* (1923) 33 C L R 1 29 A L R 401 (in note (*b*) *supra*)

(*d*) As to whether obligations as to exemption from taxation or recoupment of taxation, which are imposed on a State under agreements made with a company before Federation are 'current obligations' within the meaning of this section see *Eastern Extension Australasia and China Telegraph Co Ltd* v *Federal Commissioner of Taxation* (1925) 35 C L R 429 at pp 436 13 447 9 451, 30 A L R 144, at pp 146 8 150—

86 [a] On the establishment of the Commonwealth, the collection and control of duties of customs and of excise[1], and the control of the payment of bounties, shall pass to the Executive Government of the Commonwealth.

NOTES OF CASES (*a*) Held by the High Court that in view of this section and ss 52 (ii) and 90 the *Customs Act* 1901 was validly enacted and applies to goods imported by the Government of a State as well as to those imported by private persons *R v Sutton* (1908) 6 C L R 789 14 A L R 80)

(*b*) Held by the High Court that fees for licences under s 71 of the *Liquor Act* 1898 (N S W) (No 18 of 1898) are not duties of excise within the meaning of this section Meaning of duties of excise discussed *Peterswald v Bartley* (1904) 1 C L R 497 10 A L R (C N) 6

Held by the High Court that an Act imposing a composite duty of excise on certain manufactured goods with a proviso that the Act shall not apply to any such goods manufactured under satisfactory conditions of labour is not in substance an Act to impose duties of excise but an Act to regulate the conditions of manufacture of the goods *R v Barger Commonwealth* v *McKay,* (1908) 6 C L R 41, 14 A L R 374

As to the meaning of duties of excise see *John Fairfax & Sons Ltd* and *Smith's Newspapers Ltd* v *New South Wales* (1927) 40 C L R 399 3 A L R 84

87 During a period of ten years after the establishment of the Commonwealth and thereafter until the Parliament otherwise provides[1], of the net revenue of the Commonwealth from duties of customs and of excise not more than one fourth shall be applied annually by the Commonwealth towards its expenditure[a]

The balance shall, in accordance with this Constitution, be paid to the several States, or applied towards the payment of interest[a] on debts of the several States taken over by the Commonwealth.

GENERAL NOTES (1) the Parliament otherwise provided in pursuance of this section, by the *Surplus Revenue Act* 1910 which provided (section 4) for the cesser of s 87 from and after 31st December, 1910 and (sections 4-6) for certain payments to the States

NOTES OF CASES (*a*) Meaning of the expressions 'applied annually by the Commonwealth towards its expenditure' and 'applied towards the payment of interest' discussed by High Court *New South Wales* v *Commonwealth* (1908) 7 C L R 179, at pp 193 4 197 200, 14 A L R 625, at pp 630, 631 633

Uniform duties of customs

88 Uniform duties of customs shall be imposed within two years after the establishment of the Commonwealth [1] [a].

GENERAL NOTES —(1) By the *Customs Tariff* 1902 (No 14, 1902) the Parliament declared that the time of imposition of uniform duties of customs was 8th October, 1901

NOTES OF CASES—(a) Question as to the true date of the imposition of uniform duties discussed by Full Court of the Supreme Court of Queensland *Colonial Sugar Refining Co Ltd* v *Irving* 1903 St R Qd 261 See also decision of Privy Council on appeal *Colonial Sugar Refining Co Ltd* v *Irving*, 1906 A C 360

Imposition of uniform duties of customs as from 8th October 1901 upheld by the High Court *Tasmania* v *Commonwealth and Victoria* (1904) 1 C L R 329 10 A L R (C N) 41

Scope of section discussed by High Court *Elliott* v *Commonwealth* (1936) 54 C L R 657, at p 667, 42 A L R 174 at p 176

89. Until the imposition of uniform duties of customs— **Payment to States before uniform duties.**

(i.) The Commonwealth shall credit to each State the revenues collected therein by the Commonwealth[a]

(ii.) The Commonwealth shall debit to each State

(*a*) The expenditure[b] therein of the Commonwealth incurred solely for the maintenance or continuance, as at the time of transfer, of any department transferred from the State to the Commonwealth[c]

(*b*) The proportion of the State, according to the number of its people, in the other expenditure[b] of the Commonwealth

(iii.) The Commonwealth shall pay to each State month by month the balance[d] (if any) in favour of the State

NOTES OF CASES (*a*) Held by the High Court that the State of Tasmania was not entitled under the Constitution to be credited with duties of customs collected by the Commonwealth in the State of Victoria between 1st January 1901 and 8th October 1901 (the date of the imposition of uniform duties of customs) and passing after the latter date therefrom into the State of Tasmania for consumption Section 89 discussed by High Court *Tasmania* v *Commonwealth and Victoria* (1904) 1 C L R 329, at pp 341, 340 4, 346 8, 352 8, 360 3 10 A L R (C N) 41

(*b*) Held by the High Court that money appropriated by Parliament out of the Consolidated Revenue for a specific purpose although not yet actually disbursed is "expenditure" within the meaning of this section *New South Wales* v *Commonwealth* (1908) 7 C L R 179 14 A L R 6

(*c*) Held by the High Court in the case of a New South Wales officer transferred with his Department to the Commonwealth and subsequently retired compulsorily that the share (attributable to the Commonwealth) of the gratuity payable to the officer under s 60 (iii) of the *Public Service Act* 1895 (N S W) is during the operation of this section to be debited to the State under sub paragraph (*a*) as being expenditure of the Commonwealth incurred solely for the maintenance or continuance of the Department as at the time of transfer *New South Wales* v *Commonwealth* (1908) 7 C L R 214

(*d*) Held by the High Court that this section does not require actual "balances" to be struck at the end of each month but that the monthly payments are to be of approximate amounts, having regard to the probable total financial operations of the year *New South Wales* v *Commonwealth* (1903) 7 C L R 179 14 A L R 6

90.[a] On the imposition of uniform duties of customs the power of the Parliament to impose duties of customs[b] and of excise[c], and to grant bounties[d] on the production or export of goods, shall become exclusive.[e] **Exclusive power over customs, excise, and bounties.**

On the imposition of uniform duties of customs all laws of the several States imposing duties of customs or of excise,[f] or offering bounties on the production or export of goods, shall cease to have effect, but any grant of or agreement for any such bounty lawfully made by or under the authority of the Government of any State shall be taken to be good if made before the thirtieth day of June, one thousand eight hundred and ninety-eight, and not otherwise.

NOTES OF CASES (*a*) Held by the Full Court of the Supreme Court of Queensland and by the Privy Council that this section does not prohibit Parliament from imposing duties of excise until uniform duties of customs have been imposed *Colonial Sugar Refining Co Ltd* v *Irving*, 1903 St R Qd 261, 1906 A.C. 360.

Held by the High Court that in view of this section and ss 52 (ii) and 86, the Customs Act 1901 was validly enacted and applies to goods imported by the Government of a State as well as to those imported by private persons *R v Sutton*, (1908) 5 C L R 780, 14 A L R 805.

Per Isaacs J This section emphasises the view that s 152 of the *Customs Act 1901-1910*—which provides for an adjustment of agreements for the sale or delivery of goods in consequence of alterations in the rate of customs duty—is an incidental power resident in the Parliament of the Commonwealth in connexion with customs and excise taxation *G C Crespin & Son v Colac Co-operative Farmers Ltd* (1916) 21 C L R 201, at p 221, 22 A L R 86, at p 91.

Section cited in support of the view that s 92 is not limited to fiscal restrictions, as the power of the States to impose customs duties on the inter-state entry of goods was prevented by this section *Duncan v Queensland* (1916) 22 C L R 556, at pp 572, 618, 634, 22 A L R 465, at pp 472, 490, 497, *Re J McArthur Ltd v Queensland* (1920) 28 C L R 530, at pp 553, 554, 557, 561, 564, 565, 567, 27 A L R 130, at pp 139, 140, 141, 143, 144, *Beaubien v New South Wales, Ex parte Francis* (1928) 42 C L R 162, at p 193, 35 A L R 1, at p 11.

(b) *Per* Higgins *J* Customs taxation is solely a matter for the Commonwealth *Attorney-General of New South Wales v Collector of Customs for New South Wales* (1908) 5 C L R 818, at p 853, 14 A L R 516, at p 528.

Meaning of duties of customs discussed by High Court *Commonwealth and Commonwealth Oil Refineries Ltd v South Australia* (1920) 28 C L R 408, 33 A L R 40.

Held by the High Court (Knox *C J*, Higgins, Gavan Duffy and Starke *JJ*) that the *Stock Act* 1901 (N S W) which prohibits or regulates the introduction of cattle into New South Wales on account of real or supposed disease does not impinge upon the customs power of the Commonwealth *Ex parte Nelson (No 1)* (1928) 42 C L R 209, at p 218, 549, 35 A L R 21, at pp 22, 95.

See also reference to *Tasmania Oil Co Pty Ltd v Queensland* (1934) 51 C L R 108, 40 A L R 154 in note (e) hereunder.

Held by the High Court that the charge imposed by the Commissioner for Road Transport and Tramways, N S W, under s 37 of the *State Transport (Co-ordination) Act* 1931 (N S W) is not a duty of customs within the meaning of this section *O Gilpin Ltd v Commissioner for Road Transport and Tramways* (N S W) (1935) 52 C L R 189, 11 A L R 195.

(c) Held by the High Court that brewer licence fees under s 71 of the *Liquor Act* 1898 (N S W) (*No 18 of 1898*) are not duties of excise within the meaning of this section Meaning of "duties of excise" discussed *Peterswald v Bartley* (1904) 1 C L R 497, 10 A L R (C N) 6.

Held by the High Court that an Act purporting to impose duties of excise on certain manufactured goods with a proviso that the Act shall not apply to any such goods manufactured under satisfactory conditions of labour is not in substance an Act to impose excise duties but an Act to regulate the conditions of manufacture of the goods *R v Barger, Commonwealth v McKay* (1908) 6 C L R 41, 14 A L R 374.

Meaning of duties of excise discussed by High Court *Commonwealth and Commonwealth Oil Refineries Ltd v South Australia* (1920) 28 C L R 408, 33 A L R 40.

Held by the High Court that the tax of one half penny imposed by the *Finance (Newspapers Taxation) Act* 1926 (N S W) upon each copy of a newspaper printed for sale and actually sold (not being a newspaper issued or sold for transmission to a place outside New South Wales) is a duty of excise within the meaning of this section and that the Act is beyond the power of the Parliament of New South Wales and is invalid as ss 2, 3, 6 and 7 of the *Finance (Taxation Management) Act* 1926 (N S W) which provide machinery for carrying the provisions of that Act *John Fairfax & Sons Ltd and Smith's Newspapers Ltd v New South Wales* (1927) 39 C L R 149, 44 A L R 84.

Held by the High Court that the provisions of the *Milk Act* 1931 (N S W) and the provisions of ss 23 (1), 26 (a), (b) and 28 (a) in particular which provide for a Board fixing a minimum price for milk acquiring it selling it delivering it from the proceeds costs charges &c and paying the dairyman on the basis of the minimum price fixed did not contain a scheme which involves the imposition of a duty of excise contrary to this section *Crafter v Nott* (1934) 50 C L R 399.

Held by the High Court that the Motor Spirit Vendors Act 1931 (Q) which by s 3 provides that no person should in Queensland sell for delivery in Queensland any motor spirit which was at the time of sale situate in Queensland and unless he was the holder of a licence under the Act and by s 6 requires every holder of a licence to purchase and pay for at a prescribed rate a quantity of power alcohol manufactured in Australia bearing a prescribed proportion to the quantity of motor spirit sold by him does not impose a duty of customs or excise or grant a bounty and therefore does not violate this section *Tasmania Oil Co Pty Ltd v Queensland* (1934) 51 C L R 108, 40 A L R 154.

(d) See reference to *Tasmania Oil Co Pty Ltd v Queensland* (1934) 51 C L R 108, 40 A L R 154 in note (c) *supra*.

(e) As to the power of the Commonwealth to bring a suit under s 75 (iii) against a State for a breach of this section, see *Commonwealth v New South Wales* (1923) 32 C L R 200 at p 213, 29 A L R 385 at p 294.

Held by the High Court that the tax imposed by s 8 of the *Customs Tariff (Industries Preservation) Act* 1921-1922 which provides for a tax being imposed upon the publication by the Minister of a notice in the *Gazette* as to depreciation of currency is imposed by the Parliament of the Commonwealth, and is not an infringement of the provision in this section that the power of the Parliament to impose duties of customs shall become exclusive Meaning of exclusive in this section discussed *Nott Bros & Co Ltd v Barkley* (1925) 36 C L R 20, 31 A L R 256.

Held by the High Court (Knox *C J*, Isaacs, Higgins, Powers, Rich and Starke, *JJ*, Gavan Duffy, *J*, dissenting) that the *Taxation (Motor Spirit Vendors) Act* 1925 (S A) is invalid on the ground that it violates the provision in this section that on the imposition of uniform duties of customs, the power of the Parliament of the Commonwealth to impose duties of customs and of excise shall become exclusive *Commonwealth and Commonwealth Oil Refineries Ltd v South Australia* (1926) 38 C L R 408; 33 A L R 40.

Held by the Full Court of the Supreme Court of Queensland that a scheme of price equalisation set up in the butter industry in pursuance of the *Primary Producers Organization and Marketing Acts* 1926 to 1932 (Q) was not a provision for the payment of bounties and did not infringe this section *A C Munro & Sons Pty Ltd v Shelley* 1934 St R Qd 231.

Held by the High Court that the *State Transport (Co-ordination) Act* 1931 (N S W), and the regulations thereunder, and the administration thereof as disclosed by the evidence and particularly by the terms of the Licences (as set out in the note relating to *Duncan and Green Star Trading Co Pty Ltd v. Vizzard* on p 87 of this volume under s 92) do not contravene this section *Duncan and Green Star Trading Co Pty Ltd v Vizzard* (1935) 53 C L R 409.

(f) Held by the Full Court of the Supreme Court of South Australia that those portions of the *Distillation Act* 1884 (S A) which regulate the internal trade of the State are within the exclusive police power of the State, and have not been annulled by the joint effect of the Commonwealth Constitution, particularly ss 52 and 90, and the imposition of uniform duties of customs *Robinson v Hall*, 1906 S.A.L.R. 16.

91. Nothing in this Constitution prohibits a State from granting any aid to or bounty on mining for gold, silver, or other metals, nor from granting, with the consent of both Houses of the Parliament of the Commonwealth expressed by resolution[1], any aid to or bounty on the production or export of goods

Exceptions as to bounties.

GENERAL NOTES.—(1) No consent had up to the date of the preparation of this volume been granted by the Houses of the Parliament under this provision

92[a] On the imposition of uniform duties of customs, trade, commerce, and intercourse[b] among the States, whether by means of internal carriage or ocean navigation, shall be absolutely free[c]

Trade within the Commonwealth to be free

But[d] notwithstanding anything in this Constitution, goods imported before the imposition of uniform duties of customs into any State, or into any Colony which whilst the goods remain therein, becomes a State, shall, on thence passing into another State within two years after the imposition of such duties, be liable to any duty chargeable[e] on the importation of such goods into the Commonwealth less any duty paid in respect of the goods on their importation[f]

NOTES OF CASES.—(a) Question whether s. 92 binds the Commonwealth discussed by High Court *Ex parte Kisch* (1908) 5 C.L.R. 115 at p. 125; 15 A.L.R. 113 at p. 116; *R. v. Smithers; Ex parte Benson* (1912) 16 C.L.R. 99 at p. 112; 19 A.L.R. 209 at pp. 214-5; *New South Wales v. Commonwealth* (1915) 20 C.L.R. 54 at pp. 86, 79, 101, 105; 21 A.L.R. 125 at pp. 135, 140, 148, 149; *Imperial Tobacco Co. Ltd. v. New South Wales* (1916) 21 C.L.R. 433 at p. 454; 2 A.L.R. 201 at p. 210; *Duncan v. Queensland* (1916) 22 C.L.R. 556 at pp. 572, 593, 594, 616, 620, 634, 644; 2 A.L.R. 46 at pp. 472, 473, 480, 489, 491, 499, 500; *Wade v. McArthur Ltd. v. State of Queensland* (1920) 28 C.L.R. 530 at pp. 568, 582; 27 A.L.R. 130 at pp. 140, 142, 144; *Ex parte Nelson* (No. 1) (1928) 42 C.L.R. 209 at p. 226; 3 A.L.R. 21 at p. 26; *Huddart Parker Ltd. v. Commonwealth* (1931) 44 C.L.R. 492 at pp. 509, 510; 37 A.L.R. 72 at pp. 81, 84; *R. v. Vizzard; Ex parte Hill* (1933) 50 C.L.R. 30; 40 A.L.R. 16; *O'Gilpin Ltd. v. Commissioner for Road Transport and Tramways* (N.S.W.) (1935) 52 C.L.R. 189 at p. 212; 41 A.L.R. 138 at p. 144

Held by the High Court that the validity of a Commonwealth Act or of regulations made thereunder cannot be attacked on the ground of interference with free intercourse trade and commerce and that this section protects interstate trade against State interference does not affect the legislative power of the Commonwealth *James v. Commonwealth* (1928) 41 C.L.R. 442

Question whether s. 92 is binding on the Commonwealth expressly left by Privy Council an open question *James v. Cowan* 1932 A.C. 542; 47 C.L.R. 386; 38 A.L.R. 334

Held by the High Court that this section does not bind the Commonwealth *James v. Commonwealth* (1935) 52 C.L.R. 570; 41 A.L.R. 275. But on appeal held by the Privy Council that this section binds the Commonwealth *James v. Commonwealth* 1936 A.C. 578; 55 C.L.R. 1; 42 A.L.R. 333

Reading of this section with s. 112 discussed by High Court *Wade v. McArthur Ltd. v. State of Queensland*, (1920) 28 C.L.R. 530 at p. 562; 27 A.L.R. 130 at p. 144

As to reading sec. 51 (i) 106, 107, 108, 112 and 113 with this section see *Boughey v. New South Wales*; *Ex parte Bears* (1928) 42 C.L.R. 162 at p. 198; 35 A.L.R. 1 at p. 11; *Ex parte Nelson* (No. 1) (1928) 42 C.L.R. 209 at pp. 223, 224; 35 A.L.R. 21 at pp. 36, 37. See also *James v. Commonwealth* 1936 A.C. 578; 55 C.L.R. 1; 42 A.L.R. 333

As to whether a decision as to the application of this section to State or Commonwealth raises a question as to the limits *inter se* of the constitutional powers of the Commonwealth and those of any State or States, within the meaning of s. 74 see *Ex parte Nelson* (No. 1) (1929) 42 C.L.R. 228; 35 A.L.R. 177

Held by the Privy Council that a decision as to the application of this section to State or Commonwealth does not raise a question as to the limits *inter se* of the constitutional powers of the Commonwealth and those of a State *James v. Cowan* 1932 A.C. 542; 47 C.L.R. 386; 38 A.L.R. 334

As to whether s. 92 prohibits executive interference as well as legislative interference see *James v. Cowan* 1932 A.C. 542 at p. 558; 47 C.L.R. 386 at p. 396; 38 A.L.R. 334 at p. 338; *James v. Commonwealth* 1936 A.C. 578; 55 C.L.R. 1; 42 A.L.R. 333

As to whether antinomy exists between this section and secs. 51 (i) and 107 see *James v. Commonwealth*, 1936 A.C. 578; 55 C.L.R. 1; 42 A.L.R. 333

(b) Meaning of word Intercourse discussed by High Court *R. v. Smithers; Ex parte Benson* (1912) 16 C.L.R. 99; 19 A.L.R. 209; *Duncan v. State of Queensland*, (1916) 22 C.L.R. 556; 22 A.L.R. 465

Meaning of words "trade commerce and intercourse" discussed by High Court *Wade & McArthur Ltd. v. State of Queensland* (1920) 28 C.L.R. 530 at pp. 546, 560, 561-3; 567, 9; 27 A.L.R. 130 at pp. 136-8, 142-3, 145, 6; *O'Gilpin Ltd. v. Commissioner for Road Transport and Tramways* (N.S.W.) (1935) 52 C.L.R. 189, at pp. 204, 211; 41 A.L.R. 138 at p. 144; *James v. Commonwealth* 1936 A.C. 578; 55 C.L.R. 1; 42 A.L.R. 333

As to whether the expression "trade and commerce" in s. 51 (i) has a wider range than in this section, see *James v. Commonwealth*, 1936 A.C. 578; 55 C.L.R. 1; 42 A.L.R. 333

(c) Held by the Supreme Court of Tasmania (Clark *J.*) that the *Income Tax Act* 1902 (Tas.)—which by paragraph (ii.) of s. 32 fixed a minimum taxable amount of the income of a company not having its head office or chief place of business in Tasmania—is not repugnant to this section *In re the Australasian Automatic Weighing Machine Co.* (1909) 1 Tas. L.R. 112. *Per* Clark *J.*: Before a tax can be regarded as a violation of this section it must be equivalent to a tax upon the importation or exportation of articles of commerce from one State to another or to a tax upon the passage of persons from one State to another or to a tax upon the transmission of information or messages from one State to another. *Ibid.*

Question as to when goods which have been the subject of inter-state trade cease to be such discussed by Stephen *J.* (Supreme Court of New South Wales). *Ex parte Heath. Re Phillipson* (1932) 49 W.N. (N.S.W.) 70.

Held by the High Court that a law of a State which, for a licence authorizing the sale of wine manufactured from fruit grown in any other State, requires a greater fee to be paid than for a licence authorizing the sale of wine manufactured from fruit grown in the first mentioned State is contrary to the provisions of this section, and is therefore to the extent at least of the difference between the fees so required to be paid invalid. *Fox v. Robbins* (1908) 8 C.L.R. 115; 15 A.L.R. 112. Decision cited by Privy Council with approval. *James v. Commonwealth* (1936) A.C. 578; 55 C.L.R. 1; 42 A.L.R. 333.

Held by the Full Court of the Supreme Court of Tasmania that a State has full authority to make laws for the control of the sale of liquor whether to be supplied from outside that State or not, and that such authority is not restricted with this section. *Colman v. Betts* (1911) 7 Tas. L.R. 40.

Held by the High Court that s. 3 of the *Influx of Criminals Prevention Act* 1903 (N.S.W.), which provides in effect that any person who has been convicted in any other State of an offence for which he was liable to suffer death or to imprisonment for a year or longer is guilty of an offence if he enters New South Wales before the lapse of three years after the termination of any imprisonment suffered by him, is invalid on the ground that it is an interference with the free flow of intercourse within the meaning of this section. *Re J. v. Smithers. Ex parte Beason* (1912) 16 C.L.R. 99; 19 A.L.R. 289. Decision cited by Privy Council with approval. *James v. Commonwealth* (1936) A.C. 578; 55 C.L.R. 1; 42 A.L.R. 333.

Held by the High Court that the provisions of the *Wheat Acquisition Act* 1914 (N.S.W.), which gives the Government of New South Wales power to acquire wheat compulsorily and converts the rights and interests of persons in the wheat into claims for compensation, and avoids contracts for the sale of New South Wales wheat in N.S.W. South Wales and Interstate contracts for the sale or delivery to be delivered after 1st January 1915, do not violate this section, and that the Act is *intra vires* the Parliament of the State. *New South Wales v. Commonwealth. Commonwealth v. New South Wales* (1918) 20 C.L.R. 54; 24 A.L.R. 128. Decision discussed by Privy Council in *Ian v. Cowan* (1932) A.C. 542; 47 C.L.R. 336; 38 A.L.R. 344, and in *James v. Commonwealth* (1936) A.C. 578; 55 C.L.R. 1; 42 A.L.R. 333.

Held by the High Court (Griffith *C.J.* and Barton, Isaacs and Rich *JJ.*, Gavan Duffy *J.* doubting) that so far as s. 5 (1.) of the *Meat Supply for Imperial Uses Act* 1915 (N.S.W.), which declares that all stock and meat in any place in New South Wales are and have become and shall remain subject to the Act and shall be held for the purposes of, and shall be kept for the disposal of His Majesty's Imperial Government in aid of the supplies for His Majesty's Navy and Armies in the war, purports to authorize the Government of New South Wales to prevent the export of stock by the owners thereof from that State to another State, it is an interference with inter-State trade and commerce and therefore invalid as being an purported exercise of this section. *Wright, Innes & Co. Ltd. v. New South Wales* (1916) 21 C.L.R. 537; 22 A.L.R. 316. (Overruled by the High Court in *Duncan v. Queensland* (1916) 22 C.L.R. 556; 22 A.L.R. 465, but as to partly dismissed by the Court in *McArthur & Co. Ltd. v. Queensland* (1920) 28 C.L.R. 530; 27 A.L.R. 130.) Decision discussed by Privy Council in *James v. Commonwealth* (1936) A.C. 578; 55 C.L.R. 1; 42 A.L.R. 333.

Held by the High Court (Griffith *C.J.* and Higgins, Gavan Duffy, Powers and Rich *JJ.*, Barton and Isaacs *JJ.* dissenting) that the provisions of ss. 6 and 7 of the *Meat Supply for Imperial Uses Act* 1914 (Q.), which declare that all stock and meat in Queensland have become subject to the Act and are to be held for purposes of, and kept for disposal of His Majesty's Imperial Government in aid of the supplies for His Majesty's Navy and Armies in the war, and declare that the making of an order by the Chief Secretary the stock and meat shall become the property of His Majesty and the title of the owners shall be changed into a right to receive payment, and prohibit any owner from dealing with stock or meat except in pursuance of his directions and order of the Chief Secretary, are not inconsistent with this section, and that, for the Act is valid, and its main object is to secure a certain food supply to the Imperial Government for its use during the war, and the effect on inter-State trade is incidental and does not render the legislation invalid. *Duncan v. Queensland* (1916) 22 C.L.R. 556; 22 A.L.R. 465. (Overruled by *W. & A. McArthur Ltd. v. Queensland* (1920) 28 C.L.R. 530; 27 A.L.R. 130.) Decisions discussed by Privy Council in *James v. Commonwealth* (1936) A.C. 578; 55 C.L.R. 1; 42 A.L.R. 333.

Per Barton and Isaacs *JJ.* dissenting: (1.) The provisions in question are invalid inasmuch as while they do not transfer any fragment of ownership in the goods, they declare the owners property inalienable as to any interest whatever except to the Imperial and Queensland Governments, if those Governments should ever desire to take the goods, and also in the absence of that desire prohibit the owner from removing his goods into any other State without the permission of the Queensland Government; (2.) The legislation is a contravention of s. 92; and (3.) The absolute freedom of trade and commerce is not inconsistent with the power of the Commonwealth and State to enforce the ordinary duties of citizenship (e.g., to seize property for crime to pay debts, &c., or to expropriate property. *Duncan v. State of Queensland* (1916) 22 C.L.R. 556; 22 A.L.R. 465. [*Note.*—This case overruled *Fowgit Jones & Co. Ltd. v. New South Wales* (*supra*) but was in turn overruled by *W. & A. McArthur & Co. Ltd. v. Queensland* (see following note)]. Decision discussed by Privy Council in *James v. Commonwealth* 1936 A.C. 578; 55 C.L.R. 1; 42 A.L.R. 333.

Held by the High Court (Knox *C.J.*, Isaacs, Higgins, Rich and Starke *JJ.*, Gavan Duffy *J.*, dissenting) that so far as the *Profiteering Prevention Act of* 1920 (Q.), which provides *inter alia* that it shall be unlawful for a trader whether as principal or agent to sell or agree to sell or offer for sale any commodity at a price higher than a price declared in the *Queensland Government Gazette*, applied to sales by travellers of goods stipulated to come from Sydney to Queensland, the Act was invalid as being in contravention of this section. *W. & A. McArthur & Co. Ltd. v. Queensland* (1920) 28 C.L.R. 530; 27 A.L.R. 130. Decision questioned by Privy Council in *James v. Commonwealth* (1936) A.C. 578; 55 C.L.R. 1; 42 A.L.R. 333.

Held by the High Court (Knox *C.J.*, Isaacs, Rich and Starke *JJ.*, Higgins and Gavan Duffy, *JJ.*, dissenting) that *Duncan v. State of Queensland* (*supra*) 22 C.L.R. 556; 22 A.L.R. 465, was wrongly decided, and *Fowgit Jones & Co. Ltd. v. New South Wales* (*supra*) 21 C.L.R. 357; 22 A.L.R. 313, had been rightly decided. *W. & A. McArthur Ltd. v. State of Queensland* (1920) 28 C.L.R. 530; 27 A.L.R. 130.

Meaning of words "absolutely free" discussed by High Court. *W. & A. McArthur Ltd.* v *State of Queensland* (1920) 28 C.L.R. 530 at pp. 540 6, 561 3, 567 9, 27 A.L.R. 130, at pp. 138 40, 142 8, 146 8; *O'Gilpin Ltd.* v *Commissioner for Road Transport and Tramways* (N.S.W.), (1935) 52 C.L.R. 189, at pp. 205, 213, 41 A.L.R. 198 at pp. 141, 145. And by Privy Council in *James* v *Commonwealth*, 1936 A.C. 578, 55 C.L.R. 1, 42 A.L.R. 333.

Nature of the restrictions imposed on the States by this section discussed by High Court. *W & A MacArthur Ltd* v. *State of Queensland*, (1920) 28 C L R 530, at pp 561 2 27 A L R 130, at pp 142–3. And by Privy Council in *James* v *Commonwealth* 1936 A C 578 55 C L R 1 42 A L R 133

Question whether a State Act purporting to place restrictions on trade generally without express words of distinction can be treated as effectively restricting intra state trade discussed by High Court *W & A MacArthur Ltd* v *State of Queensland* (1920) 28 C L R 530 at pp 558 9 27 A L R 130, at pp 141–2 *Held* by the Privy Council that the word "free" does not necessarily connote the absence of discrimination between interstate and intrastate trade *James* v *Commonwealth* 1936 A C 578 55 C L R 1, 42 A L R 133

As to whether s 7 of *The Fruit Marketing Organization Act of* 1923 (Q) which provides that the Committee of Direction of Fruit Marketing shall take control of the marketing of all fruit would if it conferred an exclusive power to sell be invalid as contravening this section see *Committee of Direction of Fruit Marketing* v *Collins* (1926) 36 C L R 410 31 A L R 322

Held by the Full Court of the Supreme Court of Victoria that Regulations of the Melbourne Harbour Trust which impose different wharfage rates according as the goods are manufactured abroad or manufactured within Australia or arrive in the port of Melbourne from any port in Victoria within Port Phillip Heads, are not invalid as contravening this section the effect (if any) of the Regulations upon interstate trade being too remote indirect and uncertain to come within the operation of this section *Melbourne Harbour Trust Commissioners* v *Colonial Sugar Refining Co Ltd* 1926 A L R 140 48 A L J 3

Held by the High Court (Isaacs Higgins Powers Rich and Starke *JJ* Gavan Duffy *J* dissenting) that the *Taxation (Motor Spirit Vendors) Act* 1925 (S A) which requires every person who sells and delivers motor spirit within the State to persons within the State for the first time after the entry of the motor spirit into the State, or after the production refinement mixture or compounding of the spirit within the State to pay (in addition to any other income tax payable by him) an income tax at the rate of 4d per gallon and every person who uses in the propulsion of vehicles in the State petrol which he has purchased outside the State a tax at the rate of 3d per gallon violates the provisions of this section as to trade commerce and intercourse among the States being absolutely free *Commonwealth* v *South Australia Commonwealth Oil Refineries Ltd* v *South Australia* (1926) 38 C L R 408 33 A L R 40

Held by the High Court (Gavan Duffy Rich and Starke *JJ* Isaacs C J and Powers *J* dissenting) that this section is no more than an inhibition addressed to the Parliaments of the States preventing the interference so as to interfere with the freedom prescribed by that section and gives no right to the citizens of the Commonwealth except the right to refrain and it is necessary to procure the assistance of the judicial power in resisting such legislation and consequently that the High Court had no jurisdiction to entertain an action complaining of acquisitions and takings of the plaintiffs dried fruits after the *Dried Fruits Acts* 1924 and 1925 (S A) had ceased to operate because his cause of action was founded upon his possessory rights and not upon the Constitution and because the defendants could not justify the acquisitions and takings by invoking the Constitution or any statute involving its interpretation *James* v *Scott Lysaght* (1927) 39 C L R 1 34 A L R 234 *Held* also by the whole Court—(1) That s 20 of the *Dried Fruits Acts* 1924 and 1925 (S A) authorizing the Dried Fruits Board to determine the quantity of dried fruits produced in South Australia which may be marketed anywhere within the Commonwealth and therefore so far as it authorizes a determination by the Board limiting the quantity of dried fruits which may be marketed within the Commonwealth that section is obnoxious to this section and (2) that s 28 of those Acts in so far as it authorizes an acquisition of dried fruits which would violate the provisions of this section *Held*

The *Farm Produce Agents Act* 1926 (N S W) requires persons acting as farm produce agents to be licensed and to permit their books to inspected On the question whether this Act applies to farm products consigned from interstate to farmers in other States held by the High Court (Knox C J Isaacs Higgins Gavan Duffy and Powers *JJ* Starke *J* dissenting) that the provisions of the *Farm Produce Agents Act* 1926 (N S W) were not obnoxious to the provisions of this section *Bonalli* v *New South Wales Ex parte Bell* (1928) 42 C L R 102, 35 A L R 1 Decision cited with approval by Privy Council in *James* v *Commonwealth* 1936 A C 578 55 C L R 1 42 A L R 133

Held by the High Court (Knox C J Gavan Duffy and Starke *JJ* Isaacs Higgins and Powers *JJ*, dissenting) that s 164 of the *Stock Act* 1901 (N S W) which gives the Governor power by proclamation in the *Gazette* to restrict or absolutely prohibit for any specified time the importation or introduction of stock fodder or fittings from any other State or from any colony or country in which there is reason to believe any infectious or contagious disease in stock exists do not violate the provision in this section as to trade, commerce and intercourse among the States being absolutely free *Ex parte Nelson* (No 1), (1928) 42 C L R 209 35 A L R 21 Decision discussed by Privy Council in *James* v *Commonwealth*, 1936 A C 578 55 C L R 1 42 A L R 133

Question as to whether there is any exception from s 92 on grounds of health fraud or morals, discussed by High Court *Ex parte Nelson* (No 1) (1928) 42 C L R 209 at p 226 35 A L R 21, at p 25

Question whether the maxim *salus populi est suprema lex* can be taken to override this section, left open by Privy Council *James* v *Commonwealth* 1936 A C 578 55 C L R 1 42 A L R 133

Held by the High Court (Knox C J Gavan Duffy Powers and Starke *JJ* Higgins *J* dissenting) that s 148 (1) of the *Stock Act* 1901 (N S W) which provides that if any person does not when required give an inspector full information with respect to any imported stock fodder fittings or effects he shall be liable to imprisonment does not violate the provision in this section as to trade commerce and intercourse among the States being absolutely free *Ex parte Nelson* (No 1) (1928) 42 C L R 209 35 A L R 21 As to the powers of a State after goods or stock have crossed the border see *James* v *Commonwealth*, 1936 A C 578 55 C L R 1 42 A L R 133

Held by the Full Court of the Supreme Court of Tasmania that ss 48 and 49 of the *Fisheries Act* 1925 (Tas) in their application to fishing vessels trading interstate do not contravene the provisions of this section as to the freedom of trade and commerce between the States *Challenger* v *Hay* (1929) 24 Tas L R 53

Held by the High Court (Knox C J Gavan Duffy and Rich *JJ* Isaacs *J* dissenting) that s 28 of the *Dried Fruits Act* 1924 1927 (S A) which provides that subject to s 92 of the Constitution and for the purposes of the Dried Fruits Act or any contract made by the Dried Fruits Board constituted under the Act, the Minister of Agriculture may on behalf of His Majesty purchase or acquire compulsorily any dried fruits in South Australia grown and dried in South Australia authorizes the compulsory acquisition of such dried fruit and does not violate the provisions of s 92 of the Constitution as being an interference with the freedom of "trade commerce and intercourse among the States" *James* v. *Cowan*, (1930) 43 C.L.R 386, 36 A L R 129 On appeal held by the Privy Council that s 20 of the *Dried Fruits Act* 1924 (S A) is invalid as being contrary to the provisions of s 92 of the Constitution, and that s 28 (1) of the *Dried Fruits Act* 1924 1927 (S A) does not authorize the Minister of Agriculture for South Australia to make orders for the compulsory acquisition of dried fruits in that State grown and dried therein for the purpose of forcing surplus dried fruit off the Australian market.

Held further that such orders not only contravene s 92 of the Constitution, but also contravene s 28 of the Dried Fruits Act itself by which the powers given to the Minister are expressly made subject to s 92 of the Constitution *James* v *Cowan* 1932 A C 542 47 C L R 386 38 A.L R 534 Decision in *James* v *Cowan* discussed by Privy Council in *James* v *Commonwealth* 1936 A C 578, 55 C.L.R. 1, 42 A L R 333

Held by the High Court (Gavan Duffy, *C J*, Rich, Starke, Dixon and McTiernan, *JJ*, Evatt *J*, dissenting) that the provisions of the *Primary Producers' Organization and Marketing Act* 1926-1929 (Q) which provide for the creation of a Board in which may be vested the property of growers in any commodity contravened this section and that the Act and the Order in Council which purported to effectuate the divesting of the property were ineffectual to prevent growers of peanuts from disposing of them in interstate trade *Peanut Board* v *Rockhampton Harbour Board* (1939) 48 C L R 266, 59 A L R 161 Decision cited with approval by Privy Council in *James* v *Commonwealth* 1936 A C 578, 55 C L R 1 42 A L R 333

Held by the High Court (Rich Starke Evatt and McTiernan *JJ* Dixon *J* dissenting) that s 4 of the *Motor Car Act* 1928 1930 (Vic) —which requires every motor car to be registered and to have a separate identifying number does not infringe s 92 of the Constitution Held therefore, that a carrier resident in New South Wales who was driving on a public highway in Victoria a motor truck registered in New South Wales but not in Victoria and was at the time carrying goods from a town in New South Wales to Melbourne, was rightly convicted of an offence against s 4 *Willard* v *Rawson* (1933) 48 C L R 316 39 A L R 209 Decision discussed by Privy Council in *James* v *Commonwealth* 1936 A C 578 55 C L R 1 42 A L R 333

Held by the Court of Review N S W (Thomson *D C J*) that s 14 (2) of the *Prevention and Relief of Unemployment Acts* 1930 42 (N S W) under which income is for the purposes of that Act, defined as including income derived by a resident of the State from a source outside the State does not infringe this section *In re a Taxpayer* N S W (1933) 2 A I D 426

Held by the High Court that the scheme of compulsory acquisition of milk under s 20 of the *Milk Act* 1931 (N S W) which provides for the compulsory acquisition of milk supplied for consumption or use within the metropolitan milk distributing district of New South Wales does not contravene the provisions of this section as to the freedom of interstate trade *Cuthbert* v *Sheil* (1933) 49 C L R 999

Held by the High Court (Gavan Duffy *C J* Rich Evatt and McTiernan *JJ* Starke and Dixon *JJ* dissenting) that the provisions of the *State Transport (Co-ordination) Act* 1931 (N S W) which make it an offence to operate in New South Wales a public motor vehicle which is neither licensed by the Board nor exempt did not contravene this section as interfering with the freedom of interstate trade commerce and intercourse *R* v *Vizzard Ex parte Hill* (1933) 50 C L R 30 40 A L R 16 Decision discussed by Privy Council in *James* v *Commonwealth* 1936 A C 578 55 C L R 1 42 A L R 333

Question whether this section precludes the Parliaments of the States from in any way regulating or controlling trade commerce and intercourse among the States discussed by High Court *R* v *Vizzard Ex parte Hill* (1933) 50 C L R 30 40 A L R 16 And by the Privy Council *James* v *Commonwealth*, 1936 A C 578 55 C L R 1 42 A L R 333

Observations by the High Court on the test to be applied in testing the question whether legislation of a State infringes the provisions of this section *R* v *Vizzard Ex parte Hill* (1933) 50 C L R 30, 40 A L R 16

Observations by Privy Council on the tests to be applied in considering the question whether legislation of the Commonwealth infringes the provisions of this section *James* v *Commonwealth* 1936 A C 578 55 C L R 1 42 A L R 333

Held by the High Court (Rich Dixon Evatt and McTiernan *JJ* Starke *J* dissenting) that the *Motor Spirit Vendors Act* 1933 (Q) which by s 3 provides that no person shall in Queensland sell for delivery in Queensland any motor spirit which was at the time of sale situate in Queensland unless he was the holder of a licence under the Act and by s 6 requires every holder of a licence to purchase and pay at a prescribed rate for a quantity of power alcohol manufactured in Australia during a prescribed proportion to the quantity of motor spirit sold by him contravenes this section and to the extent to which it does so is invalid *Vacuum Oil Co Pty Ltd* v *Queensland* (1934) 51 C L R 108, 40 A L R. 154 Decision cited with approval by Privy Council in *James* v *Commonwealth* 1936 A C 578 55 C L R 1 42 A L R 333

Held by the Full Court of the Supreme Court of Queensland that neither the Primary Producers' Organization and Marketing Act 1926 to 1932 (Q) nor the Order in Council passed thereunder providing *inter alia* a price equalization scheme in the butter making industry conflicted with this section *A C Munro & Sons Pty Ltd* v *Shelley* 1934 St R Qd 251

Held by the High Court (Gavan Duffy *C J* Rich Dixon Evatt and McTiernan *JJ* Starke *J* dissenting) that as framed the *Motor Spirit Vendors Act* 1933 was not severable and was therefore wholly invalid *Vacuum Oil Co Pty Ltd* v *Queensland* (No 2) (1935) 51 C L R 677 41 A L R 114

As to the effect of this section upon State laws which but for it might be continued in force under s 107 of the Constitution see *Vacuum Oil Co Pty Ltd* v *Queensland* (No 2) (1935) 51 C L R 677, at p 691 41 A L R 114 See also *James* v *Commonwealth* 1936 A C 578 55 C L R 1 42 A L R 333

S 4 of the *Vegetation and Vine Diseases Act* 1928 (Vict) empowers the Governor in Council of the State by proclamation to prohibit the importation, introduction or bringing into Victoria of any tree, plant or vegetable which is in the opinion of the Governor in Council likely to introduce any disease or insect into Victoria and at any time to alter or revoke such proclamation Sub section 3 makes it an offence to bring into Victoria any vegetable contrary to any prohibition contained in any proclamation. The Governor in Council, by a proclamation which recited that in his opinion the introduction of potatoes from Tasmania was likely to introduce disease into Victoria, prohibited the importation, introduction or bringing into Victoria of potatoes from Tasmania The State of Tasmania and the Attorney-General thereof brought an action in the High Court against the State of Victoria and the Minister for Agriculture of that State for a declaration that the proclamation was invalid The State of Tasmania did not itself trade in potatoes with Victoria Held by the High Court as follows:—

(1) By Gavan Duffy *C J* Rich Dixon Evatt and McTiernan *JJ* that the proclamation was invalid because it contravened this section and by Gavan Duffy, *C J*, Evatt and McTiernan *JJ*, also because it was not authorized by s 4 of the *Vegetation and Vine Diseases Act*, and

(2) By Starke, *J*, that the *Vegetation and Vine Diseases Act* did not contravene s. 92 of the Constitution but that the proclamation was invalid because it was not authorised by the Act

Tasmania v *Victoria* (1935) 52 C L R 157 41 A L R 157 Decision as to State Act having contravened this section cited with approval by Privy Council in *James* v *Commonwealth* 1936 A C, 578, 55 C.L.R. 1, 42 A L R 333

Goods belonging to a company were conveyed, in a motor vehicle owned by the company, from its warehouse in Melbourne, Victoria to its branch shops in certain towns in New South Wales, for the purposes of sale. The vehicle was not licensed under the *State Transport (Co-ordination) Act* 1931 (N.S.W.), nor had an exemption from the requirement of being licensed been granted. A charge calculated at the rate of threepence per ton of the weight of the vehicle loaded to capacity for each mile from the State border to the shop most distant therefrom was imposed upon the company by the Commissioner under s. 47 of the Act. The Act provided that it should be read and construed so as not to exceed the legislative power of the State. Held by the High Court (Gavan Duffy, C.J., Rich, Evatt and McTiernan, JJ., Starke and Dixon, JJ. dissenting) that the provisions of the *State Transport (Co-ordination) Act* 1931 and the charge imposed under s. 47 did not contravene this section as interfering with the freedom of trade, commerce and intercourse among the States: *O. Gilpin Ltd.* v. *Commissioner for Road Transport and Tramways* (N.S.W.) (1935) 52 C.L.R. 189; 41 A.L.R. 138. Petition for special leave to appeal to the Privy Council in this case refused by Privy Council on 5th December 1935. Decision of High Court in Gilpin's case cited with approval by Privy Council in *James* v. *Commonwealth* 1936 A.C. 578; 55 C.L.R. 1; 42 A.L.R. 333.

Held by the High Court (Gavan Duffy, C.J., Rich, Evatt and McTiernan, JJ., Starke and Dixon, JJ. dissenting) that the *Road and Railway Transport Acts* 1930-1931 (S.A.) are not an infringement of this section as interfering with the freedom of trade, commerce and intercourse among the States: *Hessell* v. *Chapman* (1935) 52 C.L.R. 215; 41 A.L.R. 145.

A company transported goods for reward by motor lorry from a consignor in Melbourne, Victoria to a consignee in a town in New South Wales situate more than 30 miles from the border. The town was served by a railway. The company held a licence in respect of the lorry under the *State Transport (Co-ordination) Act* 1931 (N.S.W.). Upon the licence was endorsed a "Special Conditions (Non-competitive licence)" (1) The within mentioned vehicle is authorized to operate as a goods motor vehicle on or in routes roads areas or districts within New South Wales (a) on journeys none of which for a distance exceeding fifty miles is competitive with the railways or tramways. (2) In respect of any journey which is wholly or partly competitive with the railways or tramways the licensee shall pay for the full competitive distance (in addition to any other sums payable under the Act and this licence or either of them) threepence per ton of the weight of the vehicle "loaded to capacity" per mile travelled by the vehicle along a public street. (3) Provided that the terms conditions and authorities of or attached to this licence are complied with the licensee and the driver shall be exempt from the conditions mentioned in s. 18 (5) of the Act and unless the Commissioner otherwise determines from the obligations imposed by regulations 9 and 10 under that Act in respect of any journey which is not for a distance exceeding fifty miles competitive with the railways or tramways. Held by the High Court (Rich, Evatt and McTiernan, JJ., Starke, J. dissenting) that the provisions of this section were not infringed by the State Transport (Co-ordination) Act or by the regulations there under or by the administration of the Act as disclosed by the evidence and the terms of the licence and by Dixon, J. that the decisions of the majority of the Court in *R.* v. *Vizzard; Ex parte Hill* (1933) 50 C.L.R. 30; 40 A.L.R. 16; *O. Gilpin Ltd.* v. *Commissioner for Road Transport and Tramways* (N.S.W.) (1935) 52 C.L.R. 189; 41 A.L.R. 138; and *Hessell* v. *Chapman* (1935) 52 C.L.R. 214; 41 A.L.R. 145 completely covered the question of the validity of the licences in the form issued. *Duncan* and *Green Star Trading Co. Pty. Ltd.* v. *Lizard* (1935) 53 C.L.R. 499. Petition for special leave to appeal to the Privy Council in these cases refused by Privy Council on 5th December 1935.

The *Income Tax Act* 1924 (Q.) after making provision that the taxable income of a foreign company shall be the amount of the profits made by the company in Queensland further provides by the second paragraph of s. 14 (4) (a) that if such profits cannot in the opinion of the Commissioner be otherwise satisfactorily determined the taxable income of the company may be assessed by the Commissioner at a sum which bears the same proportion to the total profits made by the company as the sales made in Queensland bear to the total sales made by the company or if there are no sales in the same proportion as the total revenue derived from Queensland bears to the total revenue derived by the company. Held by the High Court that the second paragraph of s. 14 (4) (a) did not constitute an interference with trade and commerce among the States of the Commonwealth and did not infringe the provisions of this section. *Australasian Soap Company Ltd.* v. *Commissioner of Taxes (Q.)* (1935) 53 C.L.R. 544; 41 A.L.R. 303.

Held by the Supreme Court of Victoria (Mann, C.J.) that the *Dairy Products Act* 1933 (Vic.) and the declarations by the Minister thereunder were not invalid as involving a restriction upon interstate trade contrary to this section any restriction upon interstate trade under the joint scheme arranged by the Commonwealth and the State being attributable to action by the Commonwealth and the provisions of this section not binding the Commonwealth. *Seeley* v. *J. C. Halpin Pty. Ltd.* 1936 V.L.R. 76; 42 A.L.R. 138.

Per Latham, C.J., Rich and Starke, JJ. It having been assumed that s. 92 does not bind the Commonwealth the regulations under the *Transport Workers' Act* 1928-1929 are not invalid as contravening that section. *Elliott* v. *Commonwealth* (1936) 54 C.L.R. 657; 42 A.L.R. 174.

Held by the High Court that the *Dried Fruits Act* 1928-1935 is not invalid as contravening the provisions of this section the section not binding the Commonwealth. *James* v. *Commonwealth* (1935) 52 C.L.R. 570; 41 A.L.R. 275. But held by the Privy Council on appeal that the Act in question is invalid as contravening the provisions of this section and that this section binds the Commonwealth as well as the States. *James* v. *Commonwealth* 1936 A.C. 578; 55 C.L.R. 1; 42 A.L.R. 333.

Held by the Privy Council that the test whether an Act contravenes this section is whether there is interference with the freedom of passage from State to State. *James* v. *Commonwealth* 1936 A.C. 578; 55 C.L.R. 1; 42 A.L.R. 333.

Held by the Privy Council that the only limitation which can be placed on the word "free" in this section is that it means freedom from what is the crucial point in interstate trade that is, at the State barrier. *Effect of* use *of word "absolutely" discussed by Privy Council. Ibid.*

Held by the Privy Council that the following Commonwealth Acts are not invalid as interfering with the freedom of trade provided for by this section namely *Post and Telegraph Act* 1901-1923, *Wireless Telegraphy Act* 1905, *Secret Commissions Act* 1905, *Commerce (Trade Descriptions) Act* 1905-1918, *Australian Industries Preservation Act* 1906-1930, *Navigation (Carriage of Goods) Act* 1924, and *Transport Workers Act* 1928-1929, but that the *Dairy Produce Act* 1933-1935 is invalid as so interfering. *James* v. *Commonwealth* 1936 A.C. 578; 55 C.L.R. 1; 42 A.L.R. 333.

Held by the Privy Council that the following are classes of interferences with interstate trade which contravene this section –

(a) customs duties, and border prohibitions and restrictions of every kind,
(b) compulsory acquisition directed wholly or partially against interstate trade in goods, i.e. against selling them out of the State,
(c) placing a special burden on goods in the State to which they have come simply because they have come from the other State,
(d) general restriction on goods passing from State to State.

James v. *Commonwealth*, 1936 A.C. 578; 55 C.L.R. 1; 42 A.L.R. 333.

Held also that this section operates to prohibit restrictions upon free passage whether in the State of origin of the goods or in that of destination *Ibid*

(*d*) *Per* Griffith C J The effect of this section would but for s 95 be to prevent the collection of duties on goods passing from other States to Western Australia upon the establishment of the Commonwealth *Murray & Co v Collector of Customs* (1903) 1 C L R — at p 32

Paragraph considered by High Court in its bearing upon s 93 *Tasmania v Commonwealth and Victoria* (1904) 1 C L R 329 10 A L R (C N) 41

Question of application of maxim *expressio unius est exclusio alterius* to this provision under which for a limited period (two years) the excess duty only is payable discussed by Griffith C J *Tasmania v Commonwealth and Victoria* (1904) 1 C L R 329 at p 341 10 A L R (C N) 41

Per Barton J The object of the enactment of this second paragraph was to prevent one State becoming the collecting ground for goods under a low pre Federal tariff with the object of afterwards taking advantage in the other States of the uniform tariff *Tasmania v Commonwealth and Victoria* (1904) 1 C L R 329 at pp 352 [illegible] See also per O'Connor J at p 362

(*e*) As to the meaning of chargeable see *Tasmania v Commonwealth and Victoria* (1904) 1 C L R 329 at p 344 10 A L R (C N) 41

(*f*) As to the obligation to deal under s 93 with the excess duty provided for in this section see *Tasmania v Commonwealth and Victoria* (1904) 1 C L R 329 at p 352 10 A L R (C N) 41

Payment to States for five years after uniform Tariff

93[a] During the first five years after the imposition of uniform duties of customs, and thereafter until the Parliament otherwise provides[b] [1]

(i)[c] The duties of customs[d] chargeable[e] on goods imported into a State and afterwards passing into another State for consumption and the duties of excise[f] paid on goods produced or manufactured in a State and afterwards passing into another State for consumption shall be taken to have been collected not in the former but in the latter State

(ii) Subject to the last subsection the Commonwealth shall credit revenue debit expenditure,[g] and pay balances to the several States as prescribed for the period preceding the imposition of uniform duties of customs

GENERAL NOTES (1) The Parliament otherwise provided by means of the *Surplus Revenue Act* 1908 which commenced on 13th June 1908

NOTES OF CASES (a) Meaning of section discussed by High Court *New South Wales v Commonwealth* (1908) 7 C L R 179 at pp 188 195 197 204 6 14 A L R (—) at pp 628 630 631 634

(*b*) Effect of the words until the Parliament otherwise provides upon the liability of the Commonwealth to pay balances to the States discussed by High Court *New South Wales v Commonwealth*, (1908) 7 C L R 179 at pp 188 204 5 14 A L R 625 at pp 628 634

(*c*) Held by the High Court that paragraph (i) of this section applies only to goods imported, produced or manufactured *after* the imposition of uniform duties *Tasmania v Commonwealth and Victoria* (1904) 1 C L R 329 10 A L R (C N) 41

(*d*) As to whether duties of customs are imposed on the goods themselves or only in respect of goods see *Attorney General of New South Wales v Collector of Customs for New South Wales* (1908) 5 C L R 818, at pp 829 847 14 A L R 516 at pp 519, 526

(*e*) As to the meaning of chargeable see *Tasmania v Commonwealth and Victoria*, (1904) 1 C L R 329 at pp 334 344 361 10 A L R (C N) 41

(*f*) As to the meaning of the words duties of excise see cases noted under s 90 Fact that in this section the expression is used in the narrower sense and not as including all kinds of inland revenue imposts as is the case in some English Statutes pointed out by Griffith C J in *Peterswald v Bartley* (1904) 1 C L R 497 at p 506 10 A L R (C N) 65 See also *John Lawfar and Sons Ltd* and *Smith's Newspapers Ltd v New South Wales* (1927) 39 C L R 139 at p 145 33 A L R 84 at p 86

(*g*) Held by the High Court that in the case of a New South Wales officer transferred with his department to the Commonwealth and subsequently retired compulsorily the share (attributable to the Commonwealth) of the gratuity payable to him under section 60 (ii) of the *Public Service Act* 1895 (N S W) is, during the operation of this section to be debited to the State as expenditure *New South Wales v Commonwealth* (1908) 6 C L R 2144

Distribution of surplus

94.[a] After five years from the imposition of uniform duties of customs, the Parliament may provide, on such basis as it deems fair,

for the monthly payment to the several States of all surplus revenue[b] of the Commonwealth.[1]

GENERAL NOTES (1) The following provision has been made by the Parliament in pursuance of this section —

By the *Surplus Revenue Act* 1910 provision was made for a *per capita* payment of 2s. per annum to the States for a period of ten years and thereafter until the Parliament should otherwise provide

The sections of the *Surplus Revenue Act* 1910 providing for this *per capita* payment were repealed by the *States Grants Act* 1927, as from the 30th June 1927. This last-mentioned Act provided, subject to the terms of any agreement made between the Commonwealth and all the States—for certain monthly payments to each State for one year commencing on 1st July 1927. An agreement was made on 12th December, 1927, between the Commonwealth and all the States, providing for the adjustment of the Commonwealth and State financial relations. This agreement is continued in the Schedules to the *Financial Agreement Act* 1928 and the *Financial Agreement Validation Act* 1929, and appears in this Volume, Appendix C, *infra* p. 167.

NOTES OF CASES (a) *Per* Barton J.: The form of this section suggests that the financial arrangements laid down by the preceding sections of the Constitution as the arrangements to be followed during the early period of Federation were the arrangements regarded by the framers of the Constitution as being *fair*. *Tasmania* v. *Commonwealth and Victoria* (1904) 1 C.L.R. 329, at p. 333; 10 A.L.R. (C.N.) 41.

(b) Held by the High Court that the words "surplus revenue" in this section do not mean the same sum as the aggregate amount of the balances to be paid by section 87 to be paid monthly to the States. *New South Wales* v. *Commonwealth* (1908) 7 C.L.R. 179; 14 A.L.R. 62.

Held by the High Court that money appropriated by the Parliament for any of the purposes of the Constitution, even though not yet actually disbursed, cannot form part of the "surplus revenue" distributable among the States under this section; and the actual disbursement of it for that purpose is not a law, or a law at all, or no longer thought necessary by the Government. *Ibid.*

Customs duties of Western Australia

95[a] Notwithstanding anything in this Constitution, the Parliament of the State of Western Australia, if that State be an Original State, may, during the first five years after the imposition of uniform duties of customs, impose duties of customs[b] on goods passing into that State and not originally imported from beyond the limits of the Commonwealth[c], and such duties shall be collected by the Commonwealth.

But any duty so imposed on any goods shall not exceed during the first of such years the duty chargeable[c] on the goods under the law of Western Australia in force at the imposition of uniform duties, and shall not exceed during the second, third, fourth, and fifth of such years respectively, four-fifths, three-fifths, two-fifths, and one-fifth of such latter duty, and all duties imposed under this section shall cease at the expiration of the fifth year after the imposition of uniform duties.

If at any time during the five years the duty on any goods under this section is higher than the duty imposed by the Commonwealth on the importation of the like goods[d], then such higher duty shall be collected on the goods when imported into Western Australia from beyond the limits of the Commonwealth.[e]

GENERAL NOTES (1) In pursuance of the power conferred by this section the Parliament of Western Australia passed two Acts imposing customs duties, namely, Acts 64 Vic. No. 14, and 1 Edw. VII. No. 3.

NOTES OF CASES (a) Held by the High Court that under this section the power of the Parliament of Western Australia to tax goods by way of customs duties is as unfettered so far as regards the description of goods to be taxed as it was before the establishment of the Commonwealth; but the duties as prescribed by that Parliament do not attach by virtue of the *Western Australian Tariff* 11 to goods which are imported from beyond the limits of the Commonwealth. *Murray and Co.* v. *Collector of Customs*, (1903) 1 C.L.R. 25.

(b) As to whether duties of customs are imposed on the goods themselves or only in respect of goods, see *Attorney General of New South Wales* v. *Collector of Customs for New South Wales* (1908) 5 C.L.R. 818, at pp. 839, 847; 14 A.L.R. 516, at pp. 519, 526.

(c) As to the meaning of "chargeable," see *Tasmania* v. *Commonwealth and Victoria* (1904) 1 C.L.R. 329, at p. 344; 10 A.L.R. (C.N.) 41.

(d) Held by the High Court that the expression "like goods" is merely a term of comparison; it includes such goods of non-Australian origin as are of the same description as the goods mentioned in the Western Australian tariff, and is not limited to goods of a class which is presently of Australian origin. *Murray and Co.* v. *Collector of Customs*, (1903) 1 C.L.R. 25.

(c) Held by the High Court that the imposition of duties on foreign goods is within the exclusive authority of the Parliament of the Commonwealth, and that this paragraph is to be read as a governing enactment qualifying the construction of every Federal Tariff. Its effect is that if the rates imposed by the Western Australian tariff on any goods of Australian origin are higher than the rates prescribed by the Federal tariff upon the importation of like goods that tariff is to be read in Western Australia as if the higher rate were prescribed by it. The taxation of foreign goods is therefore the act of the Parliament of the Commonwealth and not of the Parliament of Western Australia. *Murray and Co* v *Collector of Customs*, (1905) 1 C L R 25.

Financial assistance to States.

96 [a] During a period of ten years after the establishment of the Commonwealth and thereafter until the Parliament otherwise provides, the Parliament may grant financial assistance to any State on such terms and conditions as the Parliament thinks fit.

NOTES OF CASES. (a) Held by the High Court that the *Federal Aid Roads Act* 1926 is a valid exercise of the power conferred upon the Parliament of the Commonwealth by this section to grant financial assistance to any State on such terms and conditions as the Parliament thinks fit. *Victoria* v *Commonwealth* (1926) 38 C L R 399.

Audit.

97 Until the Parliament otherwise provides [1] the laws in force in any Colony which has become or becomes a State with respect to the receipt of revenue and the expenditure of money on account of the Government of the Colony, and the review and audit of such receipt and expenditure shall apply to the receipt of revenue and the expenditure of money on account of the Commonwealth in the State in the same manner as if the Commonwealth or the Government or an officer of the Commonwealth were mentioned whenever the Colony, or the Government or an officer of the Colony, is mentioned.

GENERAL NOTES. (1) The Parliament has otherwise provided by means of various Audit Acts the first of which was passed in 1901.

Trade and commerce includes navigation and State railways.

98. The power of the Parliament to make laws with respect to trade and commerce extends to navigation and shipping[a], and to railways the property of any State [b].

NOTES OF CASES. (a) Held by the High Court that the effect of s. 51 (i) and s. 98 of the Constitution is to endow the Parliament not with a substantive power to deal with navigation and shipping at large, but only with power to deal with that subject in so far as it is relevant to inter State and foreign trade and commerce. Held therefore that the provisions of the *Navigation Act* 1912-1920 and the schedules thereto and of the regulations made thereunder in so far as the meaning of and accommodation on, ships, to the extent that they purport to prescribe rules of conduct to be observed in respect of ships engaged solely in the domestic trade and commerce of a State are beyond the power of the Parliament of the Commonwealth, and are to that extent invalid. *Newcastle and Hunter River Steamship Co Ltd* v *Attorney General for the Commonwealth* (1921) 29 C L R 357; 27 A L R 73. See also decision of High Court in *R* v *Burgess Ex parte Henry* (delivered 10th November 1936).

As to whether an intra State vessel may be used for the purposes of inter State or foreign trade although it may carry goods only between ports in the same State, see *Newcastle and Hunter River Steamship Co Ltd* v *Attorney-General for the Commonwealth*, (1921) 29 C L R 357 at p. 366; 27 A L R 379 at p. 370.

As to whether this section coupled with s. 51 (i), excludes the operation of the Colonial Laws Validity Act on laws made by the Commonwealth Parliament with respect to navigation and shipping, and exempts the Commonwealth Parliament from the restrictions on colonial legislation imposed by ss. 735 and 736 of the *Merchant Shipping Act* 1894, see *Union Steamship Co of New Zealand Ltd* v *Commonwealth*, (1925) 36 C L R 130; 31 A L R 269.

As to whether placitum (i) of s. 51, coupled with this section empowers the Parliament of the Commonwealth to confer on a Court of Marine Inquiry jurisdiction to inquire into a collision occurring between two steamships engaged in intra State trade, when the collision occurred at a place a short distance outside the course ordinarily used by ships engaged in trade and commerce with other countries or among the States (the two steamships having traversed part of that course shortly before the collision took place), see *R* v *Turner, ex parte Marine Board of Hobart (Tasmania)* v *Commonwealth* (1927) 39 C L R. 444; 33 A L R. 174.

As to whether s. 478 of the *Merchant Shipping Act* 1894 enables the Parliament of the Commonwealth to alter the nature of the jurisdiction exercised by any Commonwealth Court so as to affect the division of powers which the Constitution makes between Commonwealth and State, see *ibid*

(*b*) Held by the High Court that the legislative authority of the Commonwealth Parliament under the powers contained in sections 51 (i) and 98, so far as regards wages and terms of employment, does not extend further than to prohibit, for causes affecting interstate traffic specific persons from being employed in such traffic, if, indeed, it extends so far *Federated Amalgamated &c., Association v New South Wales Railway Traffic Employees Association*, (1906) 4 C L R 488, 11 A L R 271

Held by the High Court that this section does not enlarge the ambit of the trade and commerce clause in s. 51 (i), but is merely explanatory of the trade and commerce power *Owners of SS Kalibia v Wilson*, (1910) 11 C L R 689, 17 A L R 410

Held by the High Court (Isaacs, Gavan Duffy, Powers and Rich *JJ* Griffith *C J* and Barton *J*, dissenting) that this section coupled with s. 51 (i), confers upon the Commonwealth Parliament power to legislate as to navigation and shipping so far as concerns inter-State traffic and in particular to regulate the reciprocal rights and obligations of those engaged in carrying on that traffic by means of ships. Held therefore, that the *Seamen's Compensation Act* 1911 is a valid exercise of the legislative power of the Commonwealth Parliament *Australian Steamships Limited v Malcolm* (1914) 19 C L R 298, 21 A L R 97

Question whether inclusion in this section of the reference to State railways indicates that the generality of placitum (xxxv) of s. 51 should be cut down so as to exclude State railways discussed by High Court *Australian Railways Union v Victorian Railways Commissioners* (1930) 44 C L R 319, 37 A L R 37

99. The Commonwealth shall not, by any law or regulation of trade,[a] commerce, or revenue, give[b] preference to one State[c] or any part thereof over another State[c] or any part thereof.[d]

Commonwealth not to give preference

NOTES OF CASES.—(*a*) Held by the High Court that the award by the Commonwealth Court of Conciliation and Arbitration of different rates of wages or different conditions of employment in different States is not a law or regulation of trade within the meaning of this section *Federated Seamen, &c., Employees of Australasia v James Hoore & Son Pty Ltd* (1909) 8 C L R 465, 15 A L R 374

Per Latham *C J* A law providing for a bounty on the export of goods would not be a law of trade or commerce within the meaning of this section A law imposing customs duties is a law of trade, commerce or revenue within the meaning of this section *Elliott v Commonwealth* (1936) 54 C L R 657, at p 667, 42 A L R 171, at p 176

(*b*) For the word "give" discussed by High Court in relation to the imposition of a licensing system in employment in one State or a part of a State *Elliott v Commonwealth* (1936) 54 C L R 657, at pp 671, 672, 42 A L R 174, at p 178

(*c*) Held by the Full Court of the Supreme Court of Queensland that the *Tariff* 1902 (Cth) did not give preference to one State over another State contrary to this section *Colonial Sugar Refining Co Ltd v Irving* 1903 St R Q 261 Decision affirmed by Privy Council on appeal *Colonial Sugar Refining Co Ltd v Irving* 1905 A C 369

Reference to States in this section cited in support of the view that when the Constitution means that the powers conferred on the Parliament of the Commonwealth shall not be applied to State organizations the Constitution expressly says so *Merchant Service Guild of Australasia v Commonwealth Steamship Owners' Association* (No 2) (1920) 28 C L R 456, at p 501, 27 A L R 161, at p 164

(*d*) Held by the High Court (Griffith *C J* Barton and O'Connor *JJ* Isaacs and Higgins, *JJ* dissenting) that an Act purporting to impose duties of excise on certain manufactured goods with a proviso that the Act shall not apply to any such goods manufactured under conditions fixed by tribunals having power to fix different conditions for different States or areas is invalid as authorizing the giving of preference to one State or a part thereof over another State or part thereof contrary to the provisions of this section *R v Barger Commonwealth v McKay* (1908) 6 C L R 41, 14 A L R 54

Held by the High Court that the award by the Commonwealth Court of Conciliation and Arbitration of different rates of wages or different conditions of employment in different States would not amount to the giving of preference to a State contrary to this section *Federated Seamen, &c., Employees of Australasia v James Hoore & Son Pty Ltd* (1909) 8 C L R 465, 15 A L R 374

As to whether this section would prevent the Commonwealth from imposing under duties see *Duncan v Queensland*, (1916) 22 C L R 556, at p 567, 22 A L R 80, at p 87

As to the effect of this section on the Commonwealth see *Re Arthur Tillett v Queensland*, (1929) 28 C L R 530, at p 556, 37 A L R 130, at p 141

As to the invalidity of Income Tax Regulations 6 and 464 and Table III (S R 1915 No 85) on the ground that they purported to fix different amounts as the fair average value of live stock in different States, and consequently discriminated between States and parts of States see *Cameron v Deputy Federal Commissioner of Taxation* (1923) 32 C L R 68, 29 A L R 119

Held by the High Court that the *Federal Aid Roads Act* 1926 is not affected by the provisions of this section *Victoria v Commonwealth* (1926) 38 C L R 399

Held by the High Court that the *Dried Fruits Act* 1928 which requires licences to be obtained before dried fruits in one State are delivered for carriage into or are carried into another State does not give preference to one State over another State but that the Regulations made thereunder (which in the case of two States, make no provision for the appointment of a prescribed authority which might issue licences) do give preference, and are therefore invalid as being obnoxious to this section *Farmer v Commonwealth* (1928) 41 C L R 442

Section 4 of the *Dried Fruits Export Control Act* 1924-1933 (Commonwealth) constitutes a Dried Fruits Control Board and provides that the Board shall consist of (amongst others) two representatives elected by growers in Victoria and one representative elected by growers in each of the States of New South Wales, South Australia and Western Australia Held by the High Court that that section does not contravene this section Nature of "preference" which is prohibited by this section discussed by High Court *Crowe v Commonwealth*, (1935) 54 C L R 69, 41 A L R 445

Held by the High Court (Latham *C J* Rich Starke and McTiernan *JJ* Dixon and Evatt, *JJ* dissenting) that the Regulations under the *Transport Workers' Act* 1928-1929 which applied to the engagement of seamen at certain ports in four States only did not contravene this section as giving a preference to those States *Elliott v Commonwealth* (1936) 54 C L R 657, 42 A L R 174

Observations as to the discrimen which is forbidden by this section *Ibid*

Not abridge right to use water.

100. The Commonwealth shall not, by any law or regulation of trade or commerce, abridge the right of a State[a] or of the residents[b] therein to the reasonable use of the waters of rivers for conservation or irrigation.

NOTES OF CASES.—(a) Reference to States in this section cited in support of the view that when the Constitution means that the powers conferred on the Parliament of the Commonwealth shall not be applied to State operations the Constitution expressly says so. *Merchant Service Guild of Australasia v Commonwealth Steamship Owners' Association* (No 2) (1920) 28 C.L.R. 436, at p. 451, 27 A.L.R. 161, at p. 164.

(b) As to whether the word 'residents' in this section includes artificial persons or corporations as well as natural persons, see *Australasian Temperance and General Mutual Life Assurance Society Ltd v Howe* (1922) 31 C.L.R. 290 at pp. 299, 321, 334, 29 A.L.R. 46 at pp. 50, 51, 54.

Inter-State Commission

101.[a] There shall be an Inter-State Commission,[b] with such powers of adjudication[b] and administration as the Parliament deems necessary for the execution and maintenance, within the Commonwealth, of the provisions of this Constitution relating to trade and commerce,[c] and of all laws made thereunder.

GENERAL NOTES.—(1) By the *Inter State Commission Act* 1912 provision was made for the establishment of the Inter State Commission. It was to consist of a Chairman and two other members, the Chairman to receive a salary of £2,500 *per annum* and each of the other members £2,000 *per annum*.

The first three members were appointed for a term of seven years from 11th August 1912. Upon the expiration of the period of the appointments no further appointments were made, and no further appointments have since been made up to the date of the preparation of this volume.

NOTES OF CASES.—(a) Meaning of section discussed by High Court. *Huddart Parker & Co Pty Ltd v Moorehead* (1909) 8 C.L.R. 330, 15 A.L.R. 241. *New South Wales v Commonwealth* (1915) 20 C.L.R. 54, 21 A.L.R. 128.

(b) Held by the High Court (Griffith C.J., Isaacs, Powers and Rich JJ., Barton and Gavan Duffy, JJ. dissenting) that this section does not authorize the Parliament of the Commonwealth to constitute the Inter State Commission a Court. *New South Wales v Commonwealth* (1915) 20 C.L.R. 54, 21 A.L.R. 128. Held that therefore that the Inter State Commission has no power to issue an injunction. *Ibid.* Meaning of expression "powers of adjudication" discussed. *Ibid.*

(c) Held by the High Court that the jurisdiction conferred by the *Australian Industries Preservation Act* 1906-1907 s. 15B, is not within that of the execution and maintenance of the provisions of the Constitution relating to trade and commerce within the meaning of this section, and so does not fall to be entrusted to the Inter-State Commission. *Huddart Parker & Co Pty Ltd v Moorehead* (1909) 8 C.L.R. 330, 15 A.L.R. 241.

Parliament may forbid preferences by State

102. The Parliament may by any law with respect to trade or commerce forbid, as to railways,[a] any preference or discrimination by any State,[b] or by any authority constituted under a State, if such preference or discrimination is undue and unreasonable, or unjust to any State; due regard being had to the financial responsibilities incurred in any State in connexion with the construction and maintenance of its railways. But no preference or discrimination shall, within the meaning of this section, be taken to be undue and unreasonable, or unjust to any State, unless so adjudged by the Inter-State Commission.[c]

NOTES OF CASES.—(a) Question whether inclusion in this section of the reference to "railways" indicates that the generality of placitum (xxxv) of s. 51 should be cut down so as to exclude State railways, discussed by High Court. *Federated Amalgamated &c. Association v New South Wales Railway Traffic Employees' Association*, (1906) 4 C.L.R. 488, 13 A.L.R. 273. *Australian Railways Union v Victorian Railways Commissioners* (1930) 44 C.L.R. 319, 37 A.L.R. 37.

(b) Reference to States in this section cited in support of the view that when the Constitution means that the powers conferred on the Parliament of the Commonwealth shall not be applied to State operations the Constitution expressly says so. *Merchant Service Guild of Australasia v Commonwealth Steamship Owners' Association* (No 2), (1920) 28 C.L.R. 436 at p. 451, 27 A.L.R. 161 at p. 164.

(c) As to whether this section should be read as an exception from or as a supplement to the provisions of s. 92 of the Constitution, see *New South Wales v Commonwealth*, (1915) 20 C.L.R. 54, at p. 62, 21 A.L.R. 128, at p. 129.

Commissioners' appointment, tenure, and remuneration

103.[1] The members of the Inter-State Commission—

(i.) Shall be appointed by the Governor-General in Council:

(ii.) Shall hold office for seven years,[a] but may be removed within that time by the Governor-General in Council, on an address from both Houses of the Parliament in the same session praying for such removal on the ground of proved misbehaviour or incapacity[b]:

(iii.) Shall receive such remuneration as the Parliament may fix; but such remuneration shall not be diminished during their continuance in office.

GENERAL NOTES (1) See General Notes to section 101 *supra*.

NOTES OF CASES (a) As to whether the limited tenure of the office of Inter-State Commissioners renders it impossible for them to be a federal Court within the meaning of s. 72, see *New South Wales v. Commonwealth*, (1915) 20 C.L.R. 54 at pp. 67, 76, 109; 21 A.L.R. 128 at pp. 133, 138, 9, 151.

(b) As to whether the fixed tenure of office given by this section indicates that it was intended that the execution and maintenance of the trade and commerce laws should not be entrusted to ordinary members of the Public Service, see *Huddart Parker & Co. Pty. Ltd. v. Moorehead* (1909) 8 C.L.R. 0 at p. 359; 15 A.L.R. 241 at p. 251.

Saving of certain rates.

104 Nothing in this Constitution shall render unlawful any rate for the carriage of goods upon a railway, the property of a State,[a] if the rate is deemed by the Inter-State Commission[b] to be necessary for the development of the territory of the State and if the rate applies equally to goods within the State and to goods passing into the State from other States.

NOTES OF CASES (a) Question whether inclusion in this section of the reference to State railways indicates that the generality of the term (xxxx) of s. 51 should be cut down so as to exclude State railways discussed by High Court: *Federal Amalgamated Labourers' Association v. New South Wales Railway Traffic Employés Association* (1906) 4 C.L.R. 488; 13 A.L.R. 221; *Australian Railways Union v. Victorian Railways Commissioners* (1930) 44 C.L.R. 319, 37 A.L.R. 37.

(b) As to whether any of the duties assigned to the Commissioners by this section may properly be performed by a Court, see *New South Wales v. Commonwealth* (1915) 20 C.L.R. 54 at pp. 102, 110; 21 A.L.R. 128 at pp. 148, 151.

Taking over public debts of States.

Altered by No. 3, 1910, s. 2.

105 The Parliament may take over from the States their public debts *as existing at the establishment of the Commonwealth*,[1] or a proportion thereof according to the respective numbers of their people as shown by the latest statistics of the Commonwealth, and may convert, renew, or consolidate such debts, or any part thereof; and the States shall indemnify the Commonwealth in respect of the debts taken over, and thereafter the interest payable in respect of the debts shall be deducted and retained from the portions of the surplus revenue of the Commonwealth payable to the several States, or if such surplus is insufficient, or if there is no surplus, then the deficiency or the whole amount shall be paid by the several States.

GENERAL NOTES—(1) The words printed in italics in this section are those which were omitted by Act No. 3, 1910.

Agreements with respect to State debts inserted by Act No. 1, 1929, s. 2.

105A.[1]—(1.) The Commonwealth may make agreements[2] with the States with respect to the public debts of the States, including—

(a) the taking over of such debts by the Commonwealth;

(b) the management of such debts;

(c) the payment of interest and the provision and management of sinking funds in respect of such debts;

(d) the consolidation, renewal, conversion, and redemption of such debts;

(e) the indemnification of the Commonwealth by the States in respect of debts taken over by the Commonwealth: and

(f) the borrowing of money by the States or by the Commonwealth, or by the Commonwealth for the States.

(2.) The Parliament may make laws for validating any such agreement made before the commencement of this section.

(3.) The Parliament may make laws for the carrying out by the parties thereto of any such agreement.[a]

(4.) Any such agreement may be varied or rescinded by the parties thereto.

(5.) Every such agreement and any such variation thereof shall be binding upon the Commonwealth and the States parties thereto notwithstanding anything contained in this Constitution or the Constitution of the several States or in any law of the Parliament of the Commonwealth or of any State.[b]

(6.) The powers conferred by this section shall not be construed as being limited in any way by the provisions of section one hundred and five of this Constitution.

GENERAL NOTES (1) This section was inserted by Act No. 1 1929

(2) For *copies of agreements made with the States with respect to matters specified in this section* see Appendix C *infra* pp. 167-194

NOTES OF CASES (a) Held by the High Court (Rich, Starke, Dixon and McTiernan *JJ.*, Gavan Duffy, *C.J.*, and Evatt *J.* dissenting) that the provisions of Part II. of the *Financial Agreements Enforcement Act* 1932 are a valid exercise of the legislative powers of the Federal Parliament *New South Wales* v *Commonwealth* (*No. 1*) (1932) 46 C.L.R. 155; 8 A.L.R. 245.

Meaning of words "for the carrying out by the parties" discussed by High Court *New South Wales* v *Commonwealth* (*No. 1*) (1932) 46 C.L.R. 155, at pp. 178, 202, 9; 8 A.L.R. 245, at pp. 250, 260.

Held by the High Court (Rich, Starke, Dixon and McTiernan *JJ.*, Gavan Duffy, *C.J.* and Evatt, *J.*, dissenting) that s. 5 of the *Financial Agreements Enforcement Act* 1932—which requires the chief executive officer of a bank to furnish a return of the amount of the balance standing to the credit of a State and to pay the amount of the balance to an authorized person—constitutes a valid exercise of the power conferred upon the Commonwealth by this section *New South Wales* v *Commonwealth* (*No. 3*) (1934) 48 C.L.R. 246.

As to whether Part II. of the *Financial Agreements Enforcement Act* 1932 is within the power derived by the Parliament from the operation of s. 78 combined with this sub-section see *New South Wales* v. *Commonwealth* (*No. 1*) (1932) 46 C.L.R. 155 at pp. 173, 174, 203, 214-5; 38 A.L.R. 245 at pp. 248-9, 260, 265-6.

(b) Meaning of sub-section discussed by High Court *New South Wales* v *Commonwealth* (*No. 1*), (1932) 46 C.L.R. 155, at pp. 172-3, 174, 177, 179, 180, 201, 202, 221-3, 226, 228-9; 38 A.L.R. 245, at pp. 248, 249, 250, 251, 260, 268, 270, 271.

CHAPTER V. THE STATES.

Saving of Constitutions.

CHAPTER V.—THE STATES.

106.[a] The Constitution of each State of the Commonwealth shall, subject to this Constitution,[b] continue as at the establishment of the

Commonwealth, or as at the admission or establishment of the State, as the case may be, until altered in accordance with the Constitution of the State.

NOTES OF CASES (a) As to the effect of the inclusion of this section and s 107 upon the question of implied prohibitions, see *Webb v Outtrim* 1907 A C 81 at p 89 4 C L R 356 at p 359, 14 A L R (C N) 1, *Baxter v Commissioners of Taxation (N S W)* (1907) 4 C L R 1087 at p 1165 14 A L R 513 at p 543, *Amalgamated Society of Engineers v Adelaide Steamship Co Ltd* (1920) 28 C L R 129 26 A L R 337

As to the effect of this enactment upon State Constitutions see decision of the Privy Council in *McCawley v The King*, 1920 A C 691, 28 C L R 106 26 A L R 28 (reversing the High Court majority decision in (1919) 26 C L R 9 24 A L R 414)

As to reading this section with s 92 see *Roughley v New South Wales Ex parte Bears* (1928) 42 C L R 162 at p 193, 34 A L R 1 at p 11 *Ex parte Nelson (No 1)* (1928) 42 C L R 209 at pp 253 2nd 85 A L R 21 at pp 36 37

As to whether the inclusion of this section provides the restraint upon the legislative power of the Parliament of the Commonwealth over States which differentiates it from the power over the subject see *Australian Railways Union v Victorian Railways Commissioners* (1930) 44 C L R 319 at pp 331 2 37 A L R 37 at p 60

As to a State being placed in a different position from that of a subject who sued for breach of contract, and being entitled to invoke any constitutional immunity from liability other than the general liability for breach of contract implied by the Constitution or imposed by the Judiciary Act see *New South Wales v Bardolph* (1934) 52 C L R 455 at pp 459 60 11 A L R 22 at p 24

As to the extent, if any, to which this section shields against the operation of Commonwealth legislation under s 51 the provisions found in the Constitution Act of a State see *Stuart Robertson v Lloyd* (1932) 47 C L R 482 at p 491 38 A L R 369 at p 372 5 A B C 267 at p 276

As to the royal prerogative as to war being exercisable by the Governor General and his Federal Ministers and not by State Ministers see *Joseph v Colonial Treasurer (N S W)* (1918) 25 C L R 32 at p 51 24 A L R 18 at p 193

(b) Words "subject to this Constitution" relied on by Isaacs J as showing that the state constitutions are subject to the grant of the enumerated powers to the national authority which are declared to be supreme *A v Hayden, Commonwealth v McKay* (1908) 6 C L R 41 at p 85 14 A L R 374 at p 381 see also *Attorney General for Queensland v Attorney General for the Commonwealth* (1915) 20 C L R 148 at p 172 21 A L R 41 at p 45

Effect of words "subject to this Constitution" discussed by Latham J *Australian Iron and Steel Employees Federation v Whybrow & Co* (1910) 10 C L R 266 at p 280 16 A L R 185 at p 189

As to the exclusion from the scope of this section of matters which are under the exclusive control of the Parliament under s 52 see *Parry v McLaren* (1915) 30 C L R 170 at pp 185 192 199, 31 A L R 36 at pp 371 373 376

Words "subject to this Constitution" relied on in argument against the validity of the *Taxation (Motor Spirit Ventures) Act* 1925 (S A) on the ground that it is a duty of customs or of excise *Commonwealth and Commonwealth Oil Refineries Ltd v South Australia* (1926) 38 C L R 408 33 A L R 40

107 (a) Every power of the Parliament of a Colony which has become or becomes a State, shall, unless it is by this Constitution exclusively (b) vested in the Parliament of the Commonwealth (c) or withdrawn from the Parliament of the State, (d) continue (e) as at the establishment of the Commonwealth, or as at the admission or establishment of the State, as the case may be

Saving of power of State Parliaments

NOTES OF CASES (a) As to the effect which the inclusion of this section in the Commonwealth Constitution has upon the application of cases on the Constitution of the United States see *Dalton v Pelter* (1904) 1 C L R 91 10 A L R (C N) 30 *Municipal Council of Sydney v Commonwealth* (1904) 1 C L R 208, 10 A L R (C N) 29

Held by the High Court that nothing in this section empowers a State to tax a person entering the State under the direction of a paramount sovereign But if such a wide power existed it was if it would interfere with federal agencies withdrawn from the State by this section *Deakin v Webb Tyne v Webb*, (1904) 1 C L R 585 10 A L R 247 (Note — The case of *Deakin v Webb* and *Tyne v Webb*, in so far as they decide that the taxation by a State of money received by a federal officer as salary from the Commonwealth is invalid as being an interference with a federal instrumentality were overruled by *Amalgamated Society of Engineers v Adelaide Steamship Co Ltd* (1920) 28 C L R 129 26 A L R 337)

As to the effect of the inclusion of this section and s 106 upon the question of implied prohibitions, see *Webb v Outtrim* 1907 A C 81 at p 89 4 C L R 356 at p 359 14 A L R (C N) 1 *Baxter v Commissioners of Taxation (N S W)* (1907) 4 C L R 1087 at p 1165 14 A L R 513 at p 543 *Amalgamated Society of Engineers v Adelaide Steamship Co Ltd* (1920) 28 C L R 129 26 A L R 337

As to the effect of this section with s 51 (i) in forbidding to the Commonwealth the regulation of domestic trade and commerce, see *R v Barger, Commonwealth v McKay* (1908) 6 C L R 41 at p 57 14 A L R 374 at p 376

Held by the High Court that in view of the fact that s 51 (i) of the Constitution implies that the power of Parliament does not extend to trade and commerce within a State the power to legislate as to internal trade and commerce is reserved to the States by this section to the exclusion of the Commonwealth *Attorney-General of New South Wales v Brewery Employees Union of New South Wales* (1908) 6 C L R 469 14 A L R 565, *Huddart Parker & Co Pty Ltd v Moorehead* (1909) 8 C L R 330, at p p 350 4 361 370, 391, 15 A L R 241 at pp 247 9 252 255 289

Question whether this section preserves the police powers of the States for the preservation of the health, morals and safety of the people, discussed by High Court *R. v Smithers Ex parte Benson*, (1912) 16 C L R 99, at pp 106-7, 110, 114-5 118, 19 A L R 209 at pp. 210-1 212, 213-4 215

As to the effect of this section upon the validity of the *Royal Commissions Act* 1902-1912, which purports to enable a Royal Commission to compel answers generally to questions or to order the production of documents or otherwise to enforce compliance by the members of the public with its requisition, see *Attorney General for the Commonwealth* v *Colonial Sugar Refining Co Ltd* 1914 A C 237 17 C L R 644 20 A L R 22

As to the obligation imposed by this section on those who allege that a power previously possessed by the States is now exercisable by the Commonwealth see *Attorney-General for the Commonwealth* v *Colonial Sugar Refining Co Ltd* 1914 A C 237 at pp 254 5 17 C L R 644 at p 653, 20 A L R 22 at pp 26 7 *Waterhouse* v *Deputy Federal Commissioner of Land Tax* 5 A (1914) 17 C L R 665, at pp 671–2 20 A L R 175 at pp 197 8

As to whether this section has any effect in determining the extent of the Commonwealth legislative power see *Australian Steamships Limited* v *Malcolm* (1914) 19 C L R 298 at pp 309 330, 21 A L R 37 at pp 38 48

As to the continuance by virtue of this section of the general power of expropriation possessed by the States see *New South Wales* v *Commonwealth* (1915) 20 C L R 54 at pp 66 7 78 109 21 A L R 128 at pp 134 5 139 150

Section cited by majority of High Court in upholding validity of *Meat Supply for Imperial Uses Act* 1914 of the State of Queensland the validity of which had been attacked as being an infringement of s 92 of the Constitution *Duncan* v *State of Queensland* (1916) 22 C L R 556 22 A L R 486

Fact that this section *preserves* not *reserves* powers to States pointed out by Isaacs J *Stemp* v *Australian Glass Manufacturers Co Ltd* (1917) 23 C L R 236 at p 242 23 A L R 27 at p 279

As to the royal prerogative as to war being exercisable by the Governor General and his Federal Ministers and not by State Ministers see *Joseph* v *Colonial Treasurer* (N S W) (1918) 25 C L R 32 at p 51 24 A L R 185 at p 193

Held by the High Court that this section continues the previously existing powers of the Parliaments of the States to legislate with respect to state exclusive powers and state powers which are concurrent with Commonwealth powers but does not reserve any power from the Commonwealth which falls fairly within the explicit terms of an express grant in s 51 as that grant is reasonably construed unless that reservation is as explicitly stated *Amalgamated Society of Engineers* v *Adelaide Steamship Co Ltd* (1920) 28 C L R 129 26 A L R 337

As to reading this section with s 92 see *Roughley* v *New South Wales Ex parte Isaacs* (1928) 42 C L R 162 at p 193 35 A L R 1 at p 11 *Ex parte Nelson* (No 1) (1928) 42 C L R 209 at pp 254 255 35 A L R 21 at pp 36 37

Section cited in support of the view that the power of the Commonwealth to legislate with respect to inter state trade and commerce is not exclusive of that of the States *Ex parte Hill* (1913) 50 C L R 30 at pp 88 101 40 A L R 16 at pp 35 40 See also *James* v *Commonwealth* 1936 A C 578 55 C L R 1 42 A L R 33

As to whether an antinomy exists between this section and s 92 see *James* v *Commonwealth* 1936 A C 578 55 C L R 1 42 A L R 33

As to whether this section imports all State powers as fully as if they were specifically set out see *ibid*

(*b*) *Per* Isaacs and Starke JJ Exclusively vested in this section means vested in the Parliament of the Commonwealth to the exclusion of State Parliaments exclusive as opposed to concurrent *Watt Bros & Co Ltd* v *Barkley* (1925) 36 C L R 20 at p 29 31 A L R 258 at p 260

Per Isaacs J The exclusive vesting referred to in this section must be found in the language of the Constitution and not in what were once regarded as implied prohibitions apart from any language of the instrument *Clyde Engineering Co Ltd* v *Cowburn Walters Ltd* and *Peter Bros Ltd* v *Pt Lard*, (1926) 37 C L R 466 at p 488 32 A L R 214 at p 222

(*c*) As to the exclusion from the general scope of this section of matters which are under the exclusive control of the Parliament under s 51 see *Parry* v *McFarlane* (1925) 36 C L R 170 at pp 185 192 199 31 A L R 363 at pp 371 377 378

Words unless it is exclusively vested in the Parliament of the Commonwealth or withdrawn from the Parliament of the State relied on in argument against the validity of the *Taxation (Motor Spirit Vendors) Act* 1925 (S A) on the ground that it is a duty of customs or of excise *Commonwealth and Commonwealth Oil Refineries Ltd* v *South Australia* (1926) 38 C L R 408 33 A L R 40

As to whether the power to pass the *Navigation Act* 1901 (N S W) has been exclusively vested in the Parliament of the Commonwealth or withdrawn from the Parliament of the State see judgment of Higgins J (dissenting) in *Hume* v *Palmer* (1926) 38 C L R 441 at p 458 33 A L R 66 at p 72

Scope of section in relation to exclusive vesting or withdrawal from State discussed by High Court *Roughley* v *New South Wales Ex parte Isaacs* (1928) 42 C L R 162 at pp 193 4 199, 35 A L R 1, at pp 11 13,

As to whether the power of the State to protect its people or stock from infections or contagious diseases has been withdrawn within the meaning of this section see *Ex parte Nelson* (No 1) (1928) 42 C L R 209, 3 A L R 21

(*d*) See note (*c*) *supra*

(*e*) As to whether this section continues in force the competency of the Parliaments of the States to enact general penal Statutes notwithstanding the power conferred by the Constitution on the Parliament of the Commonwealth of creating and punishing offences relating to departments the control of which is by the Constitution transferred to the Executive Government of the Commonwealth see *R* v *McDonald* (1906) 8 W A L R 149

Held by the High Court (Barton J) that this section cannot be construed as "continuing" the power to tax property of the Commonwealth seeing that no such property existed before Federation *Municipal Council of Sydney* v *Commonwealth* (1904) 1 C L R 208 at p 235, 10 A L R (C N) 29

As to the effect of s 92 upon State laws which but for that section would have continued in force by virtue of this section see *Vacuum Oil Co Pty Ltd* v *Queensland* (No 2) (1935) 51 C L R 677, at p. 691, 41 A L R 114, at p 118

Saving of State laws.

108.[a] Every law in force in a Colony which has become or becomes a State, and relating to any matter within the powers of the Parliament of the Commonwealth,[b] shall, subject to this Constitution,[c] continue in force in the State[d]; and, until provision is made in that behalf by the

Parliament of the Commonwealth, the Parliament of the State shall have such powers of alteration and of repeal in respect of any such law as the Parliament of the Colony had until the Colony became a State.

NOTES OF CASES – (a) Section applied by the Supreme Court of New South Wales in Banco in upholding conviction of a person for an offence committed against the *Customs Regulation Act* 1879 (N S W) on 2nd October, 1901 two days before the *Customs Act* 1901 (Commonwealth) came into operation *Ex parte Schuck* (1902) 2 S R N S W 120

As to the effect which the inclusion of this section in the Commonwealth Constitution has upon the applicability of cases on the Constitution of the United States see *Dimes v Petter* (1904) 1 C L R 61, 10 A L R (C N) 30 *Municipal Council of Sydney v Commonwealth* (1904) 1 C L R 208, 10 A L R (C N) 29

Section cited by Isaacs J as ensuring that notwithstanding that the Constitution confers *exclusive* legislative power over places acquired by the Commonwealth for public purposes a state of anarchy does not exist in those places, *Commonwealth v New South Wales* (1923) 33 C L R 1 at p 43, 29 A L R 401 at p 414

As to the royal prerogative as to war being exercisable by the Governor-General and his Federal Ministers and not by State Ministers see *Joseph v Colonial Treasurer* (N S W) (1918) 25 C L R 32 at p 51, 24 A L R 183 at p 193

As to reading this section with s 92 see *Keighley v New South Wales Ex parte Beaves* (1928) 42 C L R 162 at p 193, 32 A L R 1 at p 11 *Ex parte Nelson (No 1)* (1928) 42 C L R 209 at pp 252 4, 35 A L R 21 at pp 36

(b) As to whether this section extends to matters within the exclusive power of the Commonwealth, see *R v Bamford*, (1901) 1 S R (N S W) 337

As to whether having regard to the fact that a State Income Tax (Machinery) Act was passed before the establishment of the Commonwealth while the Annual Tax Act was passed after its establishment a Commonwealth Public Servant is in view of this section liable to pay State income tax on his official salary see *In re Income Tax Acts (No 4) Wollstonecraft's Case* (1902) 28 V L R 357 at pp 384 90 392, 8 A L R 188 at pp 197 198 24 A L J 63 at pp 71 72

As to what matters are matters within the power of the Parliament of the Commonwealth' within the meaning of this section see *Municipal Council of Sydney v Commonwealth* (1904) 1 C L R 208 at pp 232 234 236 241, 10 A L R (C N) 9

(c) As to the meaning of the words subject to this Constitution see *Ex parte Faulkner* (1901) 1 S R (N S W) 337

(d) As to whether the words in the State refer to the geographical boundaries of the State see *R v Barnsford* (1901) 1 S R (N S W) 1

Held by the Supreme Court of New South Wales in Banco that notwithstanding the enactment of the *Customs Act* 1901 (Commonwealth) the *Customs Regulation Act* 1879 (N S W) remains in force (by virtue of this section) for the punishment of offences committed against it before the enactment of the *Customs Act* 1901 *Ex parte Schuck* (1902) 2 S R (N S W) 120

Held by the High Court that this section does not continue the liability to taxation of lands and buildings which prior to the establishment of the Commonwealth were liable to Land Taxes Crown lands in New South Wales and which upon such establishment became vested in the Commonwealth *Municipal Council of Sydney v Commonwealth* (1904) 1 C L R 208 10 A L R (C N) 9

Held by the High Court that by virtue of this section the *Imperial Offences Act* 1881 (being at the date of Federation a law in force in each of the Colonies of Australia) remains in force until the Parliament of the Commonwealth makes provision in the field and should therefore be interpreted as if there had been no Federation *McKelvey v Meagher* (1906) 4 C L R 265 12 A L R 483

109 [a] When a law of a State is inconsistent with a law of the Commonwealth,[b] the latter shall prevail, and the former shall, to the extent of the inconsistency, be invalid. **Inconsistency of laws**

NOTES OF CASES – (a) Held by the Supreme Court of New South Wales in Banco that there is nothing inconsistent within the meaning of this section in applying the *Customs Regulation Act* 1879 (N S W) to the prosecution of an offence committed against that Act notwithstanding that before the laying of the information the *Customs Act* 1901 (Commonwealth) had been enacted *Ex parte Schuck* (1902) 2 S R (N S W) 120

As to whether a law of a State imposing income tax is in its application to the official salary of an officer of the Commonwealth inconsistent with the laws by which the salary of the officer is fixed see *In re Income Tax Acts (No 4) Wollstonecraft's Case* (1902) 28 V L R 357 at pp 377 8 392 3 8 A L R 188, at pp 193 198, 24 A L J 63 at pp 67 72

As to the effect which the inclusion of this section in the Commonwealth Constitution has upon the applicability of cases on the Constitution of the United States see *Dimes v Petter* (1904) 1 C L R 91, 10 A L R (C N) 30

Held by the High Court that the attachment by State law to the transfer to the Commonwealth of land acquired by the Commonwealth for public purposes in pursuance of the *Property for Public Purposes Acquisition Act* 1901, of a condition that the Commonwealth should pay stamp duty on the transfer creates an inconsistency between the State law and that Act *Commonwealth v New South Wales*, (1906) 3 C L R 807 at pp 814, 826 12 A L R 541 at pp 542 547

As to whether s 58 of the *Distillation Act* 1884 (S A) is inconsistent with s 76 of the *Distillation Act* 1901 (Commonwealth) see *Robinson v Hall* 1906 S A L R 16

Held by the Full Court of the Supreme Court of Western Australia that the provision of the Criminal Code of that State prohibiting the uttering of a false document is not inconsistent with the provision of the *Post and Telegraph Act* 1901 (Commonwealth) prohibiting the uttering of a false telegram and a person may be convicted of an offence against the former provision even though his act amounted also to a contravention of the latter provision *R v McDonald* (1908) 8 W A L R 140 See also *R v Thomson*, 1913 St R Qd 246

As to whether this section extends to cases other than those of concurrent legislative jurisdiction, see *Baxter v Commissioners of Taxation* (N S W) (1907) 4 C L R 1087 at p 1129 13 A L R 511 at p 530 (but see *Amalgamated Society of Engineers v Adelaide Steamship Co Ltd* cited hereunder)

Effect of this section in relation to the question whether the Commonwealth Court of Conciliation and Arbitration has power to make an award inconsistent with a State law considered by High Court *Federated Sawmill, &c., Employees of Australasia* v *James Moore & Son Pty Ltd*, (1909) 8 C.L.R. 465, 15 A.L.R. 374. (As to whether this case is overruled by the *Engineers' Case*, see *Waterside Workers' Federation of Australia* v *Gilchrist Watt and Sanderson Ltd*, (1924) 34 C.L.R. 482, at p. 548, 30 A.L.R. 402 at p. 440.)

Held by the High Court that an award of the Commonwealth Court of Conciliation and Arbitration is not inconsistent with a State law if compliance with the award is consistent with obedience to the State law. Test of inconsistency discussed. *Australian Boot Trade Employees Federation* v *Whybrow & Co.* (1910) 10 C.L.R. 266, 16 A.L.R. 185. (But see *Clyde Engineering Co. Ltd* v *Cowburn*; *Metters Ltd* and *Lever Bros. Ltd* v *Pollard infra*, p. 98.)

Held by the High Court that the Commonwealth Court of Conciliation and Arbitration may by an award fix a minimum rate of wages lower than the minimum rate fixed by a Wages Board of a State pursuant to a Statute of that State for the same class of work. *Federated Engine-drivers' and Firemen's Association of Australasia* v *Adelaide Chemical and Fertilizer Co. Ltd.* (1920) 28 C.L.R. 1, 26 A.L.R. 169.

As to the royal prerogative as to war being exercisable by the Governor-General and his Federal Ministers, and not by State Ministers, see *Joseph* v *Colonial Treasurer* (N.S.W.) (1918) 25 C.L.R. 32, at p. 51, 24 A.L.R. 185, at p. 194.

Section discussed in relation to the case of *Dimmick* v *Pedder*. *Federated Municipal and Shire Council Employees Union of Australia* v *Melbourne Corporation* (1919) 26 C.L.R. 508 at pp. 582 & 25 A.L.R. 309 at p. 318.

Section cited by High Court in upholding s. 14 of the *Commonwealth Electoral (War time) Act* 1917 which prohibits the holding of a vote or referendum of the electors under the law of a State on a day appointed as polling day for the Senate or the House of Representatives and holding invalid a vote taken on that day under the *Liquor Act of* 1912 (Q.) as amended by the *Liquor Act Amendment Act of* 1914 (Q.). *R.* v *Brisbane Licensing Court*; *Ex parte Daniell* (1920) 28 C.L.R. 23, 26 A.L.R. 105.

Held by the High Court that this section gives supremacy to every Commonwealth Act over every State Act whether the latter be passed under a concurrent power or under an exclusive power if any provision in the two conflict. *Amalgamated Society of Engineers* v *Adelaide Steamship Co. Ltd.* (1920) 28 C.L.R. 129 at p. 155, 26 A.L.R. 137 at p. 144.

Held also that the rule laid down in *Dimmick* v *Pedder* 1 C.L.R. 91 at p. 111 that "when a State attempts to give to its legislative or executive authority an operation which if valid would fetter control or interfere with the free exercise of the legislative or executive power of the Commonwealth the attempt unless expressly authorized by the Constitution is to that extent invalid and inoperative" is on the basis of the supremacy of Commonwealth legislation created by this section. *Ibid.*

Section applied by Knox, C.J. and Starke, J. in upholding s. 16 of the *Lands Acquisition Act* 1906 as confirming on the Commonwealth a statutory title to land required by the Commonwealth paramount to any title dependent upon a law of the State. *Commonwealth* v *New South Wales* (1923) 33 C.L.R. 1, at p. 27, 29 A.L.R. 401 at p. 408.

Section cited by Starke, J. in support of the view that an award inconsistent with a State law is supreme over that law. *Waterside Workers' Federation of Australia* v *Gilchrist Watt and Sanderson Ltd.*, (1924) 34 C.L.R. 482 at p. 548, 30 A.L.R. 402 at p. 440.

Discussion of application of this section in case of inconsistency between Commonwealth and State laws in their admitted respective and concurrent fields. *Parra* v *McFarlane* (1925) 36 C.L.R. 170, at p. 192, 31 A.L.R. 465 at p. 473.

Section applied by High Court (Knox, C.J., Isaacs, Gavan Duffy, Rich and Starke, JJ., Higgins and Powers, JJ. dissenting) to invalidate certain provisions of the *Forty four Hours Week Act* 1925 (N.S.W.) to the extent of their inconsistency with the provisions of an award made by the Commonwealth Court of Conciliation and Arbitration. Test of inconsistency discussed. *Clyde Engineering Co. Ltd* v *Cowburn*; *Metters Ltd and Lever Bros. Ltd* v *Pollard* (1926) 37 C.L.R. 466, 32 A.L.R. 214.

Held by the High Court that a determination of a State Wages Board which fixed in an industry a higher minimum wage than that fixed by an award of the Commonwealth Court of Conciliation and Arbitration in that industry was invalid under this section. *H.V. McKay Ltd* v *Hunt* (1926) 38 C.L.R. 308, 32 A.L.R. 393.

As to whether this section is applicable to invalidate the *Taxation (Motor Spirit Licenses) Act* 1925 (S.A.) as being inconsistent with those portions of the Customs Act relating to imported goods being subject to the control of the Customs, see *Commonwealth and Commonwealth Oil Refineries Ltd* v *South Australia* (1926) 38 C.L.R. 408 at p. 421, 33 A.L.R. 40 at p. 44.

Held by the High Court (Knox, C.J., Isaacs, Gavan Duffy and Starke, JJ., Higgins, J. dissenting)—in a case in which the master of a ship had been convicted of an offence against the New South Wales Regulations for the prevention of collisions at sea, and it was contended by the defendant that proceedings should have been taken under the corresponding Commonwealth regulation—that the provisions of the *Navigation Act* 1901 (N.S.W.) and Art. 19 of the Regulations thereunder so far as they relate to the offence with which the defendant was charged are inconsistent with the *Navigation Act* 1912-1920 and therefore invalid under this section. Meaning of inconsistent discussed. *Hume* v *Palmer* (1926) 38 C.L.R. 441, 33 A.L.R. 66.

Section cited by Isaacs, J. in support of the validity of s. 20 of the Commonwealth Conciliation and Arbitration Act 1904 under which the Commonwealth Court of Conciliation and Arbitration has in certain circumstances power to direct a State industrial authority not to deal with a dispute. *R.* v *Commonwealth Court of Conciliation and Arbitration*; *Ex parte Engineers, &c. (State) Conciliation Committee*, (1926) 38 C.L.R. 563 at pp. 570-1, 33 A.L.R. 90 at p. 92.

Held by Dixon, J. that in view of this provision laws made as an exercise of Commonwealth power are paramount and absolute and prevail whether the States have or have not a power upon all or part only of the same subject. *Ex parte Nelson (No. 2)* (1929) 42 C.L.R. 258 at p. 274, 35 A.L.R. 177, at p. 183.

Section 4 of the *Masters and Servants Act* 1902 (N.S.W.) held invalid *pro tanto* by virtue of s. 109 of the Constitution by reason of its being inconsistent with the *Commonwealth Conciliation and Arbitration Act* 1904-1928. *Ex parte McLean*, (1930) 43 C.L.R. 472, 36 A.L.R. 377. *Decision followed by the Full Court of the Supreme Court of New South Wales. McKechnie* v *Ray*, 1931 S.R., N.S.W. 67.

Held by the Workers' Compensation Commission of New South Wales that there is no inconsistency between the *Transport Act* 1930 (N.S.W.) and the award of the Commonwealth Court of Conciliation and Arbitration dated 14th September 1927 concerning the New South Wales Tramways. *Waller* v *Metropolitan Transport Trust* 1931 W.C.R. N.S.W. 147.

As to the removal to the High Court under s 40 of the *Judiciary Act* 1903 1927 of a cause involving a question under this section see *O'Keefe v Country Roads Board* (1933) 45 C L R 27

Held by the High Court (Gavan Duffy, C J , Starke Evatt and McTiernan *J J* Dixon J dissenting) that the requirement of ss 4 11 and 20 of the *Moratorium Act* 1930 1931 (N S W) that the leave of the Court mentioned in the Act be obtained before the making of a demand for or the commencement of proceedings for the recovery of any instalment under a hire purchase agreement is not inconsistent with the provisions of the *Bills of Exchange Act* 1909 1912 Doctrine of inconsistency discussed *Ward Motor Ploughs Ltd v Forsyth* (1932) 48 C L R 128 5 A L R 408

As to whether certain rights given by the *Bankruptcy Act* 1924 1930 (Commonwealth) can be affected by the *Moratorium Act* 1931 (N S W) or whether there is any inconsistency between those Acts see *Ex parte Trustee of Property of Cork* (1932) 5 A B C J

As to whether an inconsistency exists between Commonwealth and South Australian Moratorium legislation see *Gerloff v Mount Gambier Co operative Soc Ltd* 1921 S A S R 3

(*b*) *Per* Griffith C J In this section law of the Commonwealth does not include a law of a Territory *R v Bernasconi* (1915) 19 C L R 629 at p 65 21 A L R 98 at p 88

110 The provisions of this Constitution relating to the Governor of a State extend and apply to the Governor for the time being of the State, or other chief executive officer or administrator of the government of the State

Provisions referring to Governor

111 The Parliament of a State may surrender any part of the State to the Commonwealth, and upon such surrender and the acceptance thereof by the Commonwealth such part of the State shall become subject to the exclusive jurisdiction of the Commonwealth (*a*)

States may surrender territory

NOTES OF CASES (*a*) Section applied in Part no 1 to the Seat of Government Territory which he regarded the Jervis Bay territory as part *Commonwealth v Hewitt* (1911) 13 C L R 482 at p 487

112 (*a*) After uniform duties of customs have been imposed, a State may levy on imports or exports or on goods passing into or out of the State, such charges (*b*) as may be necessary for executing the inspection laws of the State but the net produce of all charges so levied shall be for the use of the Commonwealth and any such inspection laws may be annulled by the Parliament of the Commonwealth (*c*)

States may levy charges for inspection laws.

GENERAL NOTES (*c*) No inspection laws of a State had up to the date of the preparation of this volume been annulled by the Parliament of the Commonwealth

NOTES OF CASES —(*a*) Effect of the enactment of this section upon the saving of s 92 as to the freedom of inter-State trade considered by High Court *Duncan v State of Queensland* (1916) 22 C L R 556 22 A L R 486 *Ex parte Arthur III v State of Queensland* (1920) 28 C L R 530 27 A L R 130 (overruling *Duncan v State of Queensland supra*) See also *Ex parte Nelson* (No 1) (1928) 42 C L R 209 at pp 252–4 35 A L R 21 at pp 36 "

As to whether this section gives a State power to exclude goods altogether in any case see *Ex parte Nelson* (No 1) (1928) 42 C L R 209 at p 240 35 A L R 21 at p 31 See also *Innes v Commonwealth* 1936 A C 578 55 C L R 1 42 A L R 33

Held by the High Court that a proclamation by the Governor in Council of Victoria purporting to be issued under the *Vegetable and Fruit Diseases Act* 1928 (Vict) prohibiting the importation introduction or bringing into Victoria of potatoes from Tasmania on the ground that the introduction was likely to introduce disease into Victoria was not an inspection law within the meaning of this section *Tasmania v Victoria* (1935) 52 C L R 157 41 A L R 157

As to whether this section should be understood as an express reservation of power to make an inspection law which otherwise would be withdrawn by s 92 see *Tasmania v Victoria* (1935) 52 C L R 157 at p 186 41 A L R 157 at p 166

Scope of power to make inspection laws discussed by High Court *Tasmania v Victoria* (1935) 52 C L R 157, 41 A L R 157

(*b*) Distinction between customs duties which may be imposed by the Commonwealth and "charges" which may be imposed by a State pointed out by Barton *J* in *Attorney General of New South Wales v Collector of Customs for New South Wales* (1908) 5 C L R 818 at p 898 14 A L R 516, at p 522

Intoxicating liquids.

113.[a] All fermented, distilled, or other intoxicating liquids passing into any State or remaining therein for use, consumption, sale, or storage, shall be subject to the laws of the State as if such liquids had been produced in the State.

NOTES OF CASES.—(a) Held by Higgins J. (High Court) that while this section empowers a State to legislate with respect to intoxicating liquids imported into a State as fully as with respect to intoxicating liquids produced in the State it does not authorize a discrimination between imported intoxicating liquids and those produced in the State adverse to the former *Fox v Robbins* (1908) 8 C.L.R. 115, 15 A.L.R. 112.

Effect of the enactment of this section upon the construction of s. 92, as to the freedom of inter-State trade considered by High Court *Duncan v State of Queensland* (1916) 22 C.L.R. 556 at pp. 589 *et seq.*, 618, 22 A.L.R. 405 at pp. 479 *et seq.* 490. H. & A. *McArthur Ltd. v State of Queensland*, (1920) 28 C.L.R. 530, 27 A.L.R. 130 (overruling *Duncan v State of Queensland supra*).

Effect of section discussed by High Court *Ex parte Nelson (No. 1)* (1928) 42 C.L.R. 209, at p. 240, 35 A.L.R. 21 at p. 31.

As to reading this section with s. 92 see *ibid.*

See *per* Latham C.J. in *Fox v Burgess Ex parte Henry* (judgment delivered 10th November 1936).

States may not raise forces. Taxation of property of Commonwealth or State.

114.[a] A State[b] shall not, without the consent[c] of the Parliament of the Commonwealth, raise or maintain any naval or military force,[d] or impose[e] any tax[f] on property[g] of any kind belonging to the Commonwealth, nor shall the Commonwealth impose any tax on property[h] of any kind belonging to a State.[i]

NOTES OF CASES.—(a) As to the effect upon the doctrine of implied powers of the inclusion of this section in the Constitution see *Municipal Council of Sydney v Commonwealth* (1904) 1 C.L.R. 208 at p. 236, 10 A.L.R. (C.N.) 29. *Webb v Outtrim* 1907 A.C. 81, 4 C.L.R. 356, 13 A.L.R. (C.N.) 1.

As to whether the inclusion of this section in the Constitution has had the effect of exhaustively defining the prohibitions upon the exercise of State powers see *Fuller v Commissioners of Taxation (N.S.W.)*, (1907) 4 C.L.R. 1087 at p. 1126, 13 A.L.R. 13 at p. 29.

As to the royal prerogative as to war being exercisable by the Governor-General and his Federal Ministers and not by State Ministers see *Joseph v Colonial Treasurer (N.S.W.)* (1918) 25 C.L.R. 32 at p. 51, 24 A.L.R. 155 at p. 163.

Held by the High Court that it having once been ascertained in accordance with the rules of construction laid down by the Privy Council in *Webb v Outtrim* 1907 A.C. 81, 4 C.L.R. 356, 13 A.L.R. (C.N.) 1, and *Attorney-General for Commonwealth v Colonial Sugar Refining Co.* 1914 A.C. 237, 17 C.L.R. 644, 20 A.L.R. — is the rule to be applied in construing the Constitution that a power has been conferred on the Parliament of the Commonwealth by the Constitution no implication of a prohibition against the exercise of that power can arise nor can a possible abuse of the power narrow its limits *Amalgamated Society of Engineers v Adelaide Steamship Co. Ltd.* (1920) 28 C.L.R. 129, 26 A.L.R. 337.

(b) Reference to States in this section cited in support of the view that when the Constitution means that the powers conferred on the Parliament of the Commonwealth shall not be applied to State operations the Constitution expressly says so *Merchant Service Guild of Australasia v Commonwealth Steamship Owners' Association (No. 2)* 1920) 28 C.L.R. 436 at p. 451, 27 A.L.R. 161 at p. 164.

(c) As to the nature of the consent contemplated by this section see *Municipal Council of Sydney v Commonwealth* (1904) 1 C.L.R. 208 at pp. 217, 232, 236, 10 A.L.R. (C.N.) 29.

(d) Section cited by Isaacs J. in support of the view that the legislative power conferred upon the Parliament of the Commonwealth by s. 51 (vi) is exclusive *Fairey v Burnett* (1918) 24 C.L.R. 433 at p. 452, 22 A.L.R. 201 at pp. 208.

As to the power of the Commonwealth to bring a suit under s. 75 (iii) against a State for a breach of this section see *Commonwealth v New South Wales* (1923) 32 C.L.R. 200, at p. 213, 29 A.L.R. 289, at p. 294.

(e) As to the meaning of "impose" in this section (i.e. whether prospective only) and as to when municipal rates are imposed under a law passed before Federation see *Municipal Council of Sydney v Commonwealth* (1904) 1 C.L.R. 208 at pp. 220, 230, 234, 236, 241, 2 10 A.L.R. (C.N.) 29.

(f) Held by the High Court that to levy a municipal rate upon Commonwealth property is to impose a tax within the meaning of this section *Municipal Council of Sydney v Commonwealth* (1904) 1 C.L.R. 208, 10 A.L.R. (C.N.) 29.

Held by the Full Court of the Supreme Court of Queensland that the lessee of land leased by a private individual from the Commonwealth of Australia the owner of the land is not rateable under *The City of Brisbane Act of* 1924 the land itself not being rateable land within the meaning of that Act. Case of *Municipal Council of Sydney v Commonwealth* (1 C.L.R. 208, 10 A.L.R. (C.N.) 29) discussed *Coldrake v Brisbane City Council*, (1928) 22 Q.J.P.R. 34.

(g) Held by the High Court that a receipt given by an officer of the Commonwealth upon payment of his salary is not property of the kind intended in this section which appears to refer to taxation imposed upon property *qua* property *D'Emden v Pedder* (1904) 1 C.L.R. 91, 10 A.L.R. (C.N.) 30.

As to a licence fee payable on a licence to drive a motor car not being a tax on property within the meaning of this section *see Perrie v McFarlane* (1925) 36 C.L.R. 170 at p. 201, 31 A.L.R. 365 at p. 377.

(h) As to whether customs duties are a tax on property within the meaning of this section, see *Attorney-General of New South Wales v Collector of Customs for New South Wales* (1903) 3 S.R. (N.S.W.) 115, *Attorney-General of New South Wales v Collector of Customs for New South Wales*, (1908) 5 C.L.R. 818, 14 A.L.R. 516. See also *Huddart Parker & Co. Pty. Ltd. v Moorehead*, (1909) 8 C.L.R. 330, at p. 413, 15 A.L.R. 241 at p. 272.

(a) Held by the High Court that the provisions of s. 26 of the *Land Tax Assessment Act* 1910 do not amount to a tax on property of the State within the meaning of this section *Osborne* v *Commonwealth* (1911) 12 C.L.R. 321, 17 A.L.R. 242.

Held by the High Court that the *Land Tax Assessment Act* 1910-1914, in so far as it purports by s. 29 to impose land tax upon leasehold estates in Crown lands, is not invalid under this section as imposing a tax upon property belonging to a State *Attorney General for Queensland* v *Attorney General for the Commonwealth* (1915) 20 C.L.R. 148, 21 A.L.R. 221. Special leave to appeal to the Privy Council from this decision refused by the Privy Council after full argument *Attorney General for Queensland* v *Attorney General for the Commonwealth*, (1916) 22 C.L.R. 552, 23 A.L.R. 85.

As to whether the express immunity given to a State by this section should be treated as excluding any implication of immunity from laws as to conciliation and arbitration see *Federated Municipal and Shire Council Employees Union of Australia* v *Melbourne Corporation* (1919) 26 C.L.R. 508 at p. 539, 25 A.L.R. 309 at p. 321.

As to the power of a State to bring a suit under s. 75 against the Commonwealth for a breach of this section see *Commonwealth* v *New South Wales* (1923) 32 C.L.R. 200 at p. 214, 29 A.L.R. 289 at p. 294.

115 (a) A State shall not coin money, nor make anything but gold and silver coin a legal tender in payment of debts. States not to coin money

NOTES OF CASES.—(a) Section cited by Griffith, C.J., Barton and O'Connor, JJ., in support of the view that even though, like the American Constitution, the Australian Constitution contained express prohibitions it might also be regarded as containing implied prohibitions *Baxter* v *Commissioners of Taxation* (N.S.W.) (1907) 4 C.L.R. 1087, at p. 1128, 14 A.L.R. 313, at p. 330. (But see *Amalgamated Society of Engineers* v *Adelaide Steamship Co. Ltd.* (1920) 28 C.L.R. 129, 26 A.L.R. 387.)

As to the question whether an alleged violation by a State of the provisions of this section would involve a question as to the limits *inter se* of the constitutional powers of the Commonwealth and those of that State, see *Lenehan* v *Cowan* (1912) A.C. 542, at p. 560, 27 C.L.R. 386, at p. 398, 28 A.L.R. 344, at p. 349.

116 (a) The Commonwealth shall not make any law for establishing any religion, or for imposing any religious observance, or for prohibiting the free exercise of any religion,(b) and no religious test shall be required as a qualification for any office or public trust under the Commonwealth. Commonwealth not to legislate in respect of religion

NOTES OF CASES.—(a) Section cited by Griffith, C.J., Barton and O'Connor, JJ., in support of the view that even though, like the American Constitution, the Australian Constitution contained express prohibitions it might also be regarded as containing implied prohibitions *Baxter* v *Commissioners of Taxation* (N.S.W.) (1907) 4 C.L.R. 1087, at p. 1128, 14 A.L.R. 313, at p. 330. (But see *Amalgamated Society of Engineers* v *Adelaide Steamship Co. Ltd.* (1920) 28 C.L.R. 129, 26 A.L.R. 387.)

Section cited by Griffith, C.J., in support of the view that the Federal Executive cannot appoint a Royal Commission to inquire into matters of information as to which is relevant only to a possible alteration of the Constitution under s. 128. *Colonial Sugar Refining Co. Ltd.* v *Attorney General for the Commonwealth* (1912) 15 C.L.R. 182, at p. 195, 18 A.L.R. 149, at p. 434. See also 14 C.L.R. 257, 17 C.L.R. 644, 20 A.L.R. 22.

Held by the High Court that the provisions of the *Defence Act* 1903-1910 imposing obligations on all male inhabitants of the Commonwealth in respect of military training do not prohibit the free exercise of any religion and are therefore not an infringement of this section. *Kruger* v *Williams* (1912) 15 C.L.R. 366, 18 A.L.R. 218.

Per Higgins, J.: If abstention from voting were part of an elector's religious duty as it appeared to the mind of the elector, this would be a valid and sufficient reason for his failure to vote in view of the provisions of this section. *Judd* v *McKeon* (1926) 38 C.L.R. 380, at p. 387, 32 A.L.R. 389, at p. 392.

See *per* Isaacs, C.J., in *In re Berry, Ex parte Hall* (judgment delivered 10th November 1916).

117. (a) A subject of the Queen, resident in any State, shall not be subject in any other State to any disability or discrimination which would not be equally applicable to him if he were a subject of the Queen resident in such other State. Rights of residents in States

NOTES OF CASES.—(a) Held by the High Court that the real ground of the discrimination prescribed by the *Administration Act* 1903 (W.A.) s. 86 was domicile and not residence, and that therefore the enactment was not void under this section as setting up a discrimination between the residents of different States *Davies & Jones* v *Western Australia* (1904) 2 C.L.R. 29, 11 A.L.R. 73.

Section cited by Griffith, C.J., Barton and O'Connor, JJ., in support of the view that even though, like the American Constitution, the Australian Constitution contained express prohibitions it might also be regarded as containing implied prohibitions *Baxter* v *Commissioners of Taxation* (N.S.W.) (1907) 4 C.L.R. 1087, at p. 1128, 14 A.L.R. 313, at p. 330. (But see *Amalgamated Society of Engineers* v *Adelaide Steamship Co. Ltd.*, (1920) 28 C.L.R. 129, 26 A.L.R. 387.)

Held by the High Court that this section only applies to a person who, being resident in one State is seeking to assert rights in another *Lee Fay* v *Vincent* (1908) 7 C.L.R. 389, 15 A.L.R. 35.

As to whether a State Act making it an offence for a person, who has been convicted in one State of an offence punishable by imprisonment for twelve months, to enter another State, is valid in view of this section see *R v Smithers, Ex parte Benson* (1912) 16 C L R 99, 19 A L R 209

Fact that the nature of the discrimination forbidden by this section is a discrimination based on residence pointed out by the High Court *James v Commonwealth* (1928) 41 C L R 442, at pp 457, 466

Held by the Full Court of the Supreme Court of Queensland that notwithstanding anything contained in the Income Tax Acts (Q) it is the duty of the Magistrates Court to give full effect to this section, and that the protection afforded by this section is absolute and cannot be fettered controlled or interfered with by the legislation of a State *Commissioner of Taxes Qld v Parks* 1933 St R Qd 106; 2 A T D 349

Meaning of resident discussed in relation to the case of a person employed on an interstate vessel who in the course of his duty was absent for the greater portion of the year from the State in which his home was situated *Ibid*

Recognition of laws, &c., of States

118 [a] Full faith and credit shall be given, throughout the Commonwealth, to the laws, the public Acts and records, and the judicial proceedings of every State

NOTES OF CASES (1) Question of application of section discussed by High Court *Jones v Jones* (1928) 40 C L R 315, 34 A L R 4

Construction of section discussed by the Full Court of the Supreme Court of South Australia *In re Commonwealth Agricultural Service Engineers Ltd* 1928 S A S R 342

Per Rich Dixon and Evatt JJ Observations on the effect of this section in relation to the question whether in an action in a State Court on a contract the proper law of which is that of another State of the Commonwealth the Court can refuse to recognize a statute of that other State on grounds of public policy *Maryan Pastoral Co Pty Ltd v Woolpa Pastoral Co Pty Ltd Woolpa Pastoral Co Pty Ltd v McKellar* (1933) 48 C L R 565, 34 A L R 401

Protection of States from invasion and violence

119 [a] The Commonwealth shall protect every State against invasion and, on the application of the Executive Government of the State, against domestic violence

NOTES OF CASES (1) Section cited by Isaacs J in support of the view that the legislative power conferred upon the Parliament of the Commonwealth by sec 51 (vi) is exclusive *Farey v Burvett* (1916) 21 C L R 43, at p 84, 2 A L R 201 at pp 208 9

As to the royal prerogative as to war being exercisable by the Governor General and his Federal Ministers and not by State Ministers see *Joseph v Colonial Treasurer* (N S W) (1918) 25 C L R 32, at p 51, 24 A L R 18, at p 193

Per Isaacs J *(dissenting)* A soldier acting for the purposes of this section is acting not in his capacity of State citizen but as a soldier of the Commonwealth *Farey v McFarlane* (1925) 36 C L R 170, at p 206, 31 A L R 305 at p 379

Custody of offenders against laws of the Commonwealth

120 Every State shall make provision for the detention in its prisons of persons accused or convicted of offences against the laws of the Commonwealth, and for the punishment of persons convicted of such offences, and the Parliament of the Commonwealth may make laws to give effect to this provision

CHAPTER VI
NEW STATES

CHAPTER VI.—NEW STATES

New States may be admitted or established

121. The Parliament may admit to the Commonwealth or establish new States,[1] and may upon such admission or establishment make or impose such terms and conditions, including the extent of representation in either House of the Parliament, as it thinks fit.

GENERAL NOTES—(1) The Parliament had not up to the date of the preparation of this volume, admitted or established any new States.

122.[a] The Parliament may make laws for the government of any territory[a] surrendered by any State to and accepted by the Commonwealth, or of any territory placed by the Queen under the authority of and accepted by the Commonwealth,[b] or otherwise acquired by the Commonwealth,[c] and may allow the representation of such territory in either House of the Parliament to the extent and on the terms which it thinks fit.[*] Government of territories.

GENERAL NOTES.—(1) The following territories have been accepted or otherwise acquired by the Commonwealth:

The Territory of Papua (See *Papua Act* 1905–1934.)

The Northern Territory of Australia (See *Northern Territory Acceptance Act* 1910–1919 as amended by the *Northern Australia Act* 1926. See also the following *Northern Territory Administration Acts*: No. 27, 1910; No. 19, 1926; Nos. 5 and 7, 1931; and No. 18, 1933.)

The Territory of Norfolk Island (See *Norfolk Island Act* 1913–1934.)

The Jervis Bay Territory (See *Jervis Bay Territory Acceptance Act* 1915.)

The Territory for the Seat of Government (See *Seat of Government Acceptance Act* 1909–1933.)

The Territory of Ashmore and Cartier Islands (See *Ashmore and Cartier Islands Acceptance Act* 1933.)

The Australian Antarctic Territory (See *Australian Antarctic Territory Acceptance Act* 1933.)

In addition, the Commonwealth has a mandate (known as a Class C mandate) for the government of the Territories and Islands formerly constituting German New Guinea, which by the *New Guinea Act* 1920–1935, made provision for the government of those Territories and Islands. By s. 4 of that Act the Commonwealth has declared the Territories and Islands in question to be a Territory under the authority of the Commonwealth by the name of the Territory of New Guinea.

(*) By the *Northern Territory Representation Act* 1922–1936 the Parliament has allowed the representation of the Northern Territory in the House of Representatives by one member who has the right to speak but not the right to vote.

None of the other Territories referred to in Note (1) *supra* had at the date of the preparation of this volume any representation in either House of the Parliament.

NOTES OF CASES.—(a) Held by the High Court that the limitations imposed by s. 51 of the Constitution upon the making of laws imposing taxation apply only to such laws as are made under the power conferred by s. 51 (ii.) and do not apply to laws made under this section for the government of territories. *Buchanan v. Commonwealth* (1913) 16 C.L.R. 315; 19 A.L.R. 251.

Held by the High Court that the power conferred on the Commonwealth Parliament by this section to make laws for the government of a territory, whether that power is exercised directly or through a subordinate legislature, is not restricted by the provision that the trial on indictment of any offence against any law of the Commonwealth shall be by jury. *R. v. Bernasconi* (1915) 19 C.L.R. 629; 21 A.L.R. 86.

Held by the High Court (Isaacs, Higgins, Rich and Starke JJ., Knox C.J. and Gavan Duffy J. dissenting) that in exercise of the power conferred by this section the Parliament of the Commonwealth may confer upon the High Court jurisdiction to entertain an appeal from a Court established by the Parliament in a territory, notwithstanding that the Court so established is not a federal court within the meaning of s. 71 of the Constitution. *Porter v. R. ex parte Yee Hem* (1926) 37 C.L.R. 432; 32 A.L.R. 144.

As to the Court of a Territory being invested with federal jurisdiction by virtue of laws made under this section, see *Hall v. R. ex parte Kong Hem and Wah On* (No. 1) (1919) 26 C.L.R. 245 at p. 262; 33 A.L.R. 100 at p. 107.

As to whether the legislature is empowered by this section to invest the High Court with original *jurisdiction in respect of the Territory for the Seat of Government*, see *Federal Capital Commission v. Laverton Building and Investment Co. Pty. Ltd.* (1929) 42 C.L.R. 58, at p. 80.

Held by the High Court that s. 4 of the *Immigration Act* 1920 in so far as it relates to taxation within the Territories of the Commonwealth is within the power conferred by this section. *R. v. Burgess. Ex parte Henry* (judgment delivered 10th November 1936).

(b) As to the position of a territory placed by the Queen under the authority of the Commonwealth but not yet accepted by the Commonwealth, see *Strachan v. Commonwealth* (1906) 4 C.L.R. 455 at p. 466; 13 A.L.R. 631, at p. 634.

(c) As to whether the power of the Commonwealth to legislate with respect to the mandated territory of New Guinea is derived from this section, see *Malcolm v. Cost Law of Expropriated Property* (1921) 34 C.L.R. 207, at p. 300; 31 A.L.R. 1 at p. 2; *Jolley v. Damla* (1935) 49 C.L.R. 242 at pp. 250, 256, 278–9, 289; 39 A.L.R. 506 at pp. 508, 510, 519, 20, 524.

123.[a] The Parliament of the Commonwealth may, with the consent of the Parliament of a State, and the approval of the majority of the electors of the State voting upon the question, increase, diminish, or otherwise alter the limits of the State, upon such terms and conditions as may be agreed on, and may, with the like consent, make provision respecting the effect and operation of any increase or diminution or alteration of territory in relation to any State affected. Alteration of limits of States.

GENERAL NOTES.—(1) The powers contained in this section had not been exercised by the Parliament of the Commonwealth up to the date of the preparation of this volume.

Formation of new States.

124.[1] A new State may be formed by separation of territory from a State, but only with the consent of the Parliament thereof, and a new State may be formed by the union of two or more States or parts of States, but only with the consent of the Parliaments of the States affected.

GENERAL NOTES (1) No new State had up to the date of the preparation of this volume been formed in pursuance of this section

CHAPTER VII MISCELLANEOUS

CHAPTER VII. MISCELLANEOUS.

Seat of Government

125 [a] The seat of Government of the Commonwealth shall be determined by the Parliament,[1] and shall be within territory which shall have been granted to or acquired by the Commonwealth, and shall be vested in and belong to the Commonwealth, and shall be in the State of New South Wales,[b] and be distant not less than one hundred miles from Sydney.

Such territory shall contain an area of not less than one hundred square miles, and such portion thereof as shall consist of Crown lands shall be granted to the Commonwealth without any payment therefor.

The Parliament shall sit at Melbourne until it meet at the Seat of Government.[2]

GENERAL NOTES (1) By the *Seat of Government Act* 1904 it was determined that the Seat of Government of the Commonwealth should be within seventeen miles of Dalgety in the State of New South Wales and that the territory to be granted to or acquired by the Commonwealth should contain an area of not less than nine hundred square miles and have access to the sea

By the *Seat of Government Act* 1908 the *Seat of Government Act* 1904 was repealed and it was determined that the Seat of Government of the Commonwealth should be in the district of Yass Canberra in the State of New South Wales and it was enacted that the territory to be granted to or acquired by the Commonwealth for the Seat of Government should contain an area of not less than nine hundred square miles, and have access to the sea

By the *Seat of Government Acceptance Act* 1909 an agreement between the Commonwealth and the State of New South Wales relating to the surrender by the State and acceptance by the Commonwealth of an area of about nine hundred square miles was ratified and confirmed and it was declared and determined that the Seat of Government should be in the territory described in the agreement The transfer of the territory to the Commonwealth took effect on and from 1st January 1911

The name of Canberra was given to the Seat of Government on 12th March 1913

(2) The Parliament met at the Seat of Government on 9th May 1927

NOTE OF CASES (a) As to the exclusive nature of the legislative power of the Parliament of the Commonwealth with respect to the territory for the Seat of Government see *In re Income Tax Acts* (No 4), *Wollaston's Case* (1903) 28 V L R 357 at p 360 8 A L R 188 at pp 192-3 24 A L T 67 at p 66

As to whether the legislature is empowered to invest the High Court with original jurisdiction in respect of the Territory for the Seat of Government see *Federal Capital Commission v Laristan Building and Investment Co Pty Ltd* (1929) 42 C L R 582 at p 585

(b) As to whether the words "shall be in the State of New South Wales" relate to the geographical boundaries of the State see *R v Bamford* (1901) 1 S R (N S W) 357

Power to Her Majesty to authorize Governor-General to appoint deputies.

126. The Queen may authorize the Governor-General to appoint any person, or any persons jointly or severally, to be his deputy or deputies[1] within any part of the Commonwealth, and in that capacity to exercise during the pleasure of the Governor-General such powers and functions of the Governor-General as he thinks fit to assign to such deputy or deputies, subject to any limitations expressed or directions given by the Queen; but the appointment of such deputy or deputies shall not affect the exercise by the Governor-General himself of any power or function.

GENERAL NOTES (1) By Clause VI of the Letters Patent dated 29th October, 1900, constituting the office of Governor General and Commander-in-Chief of the Commonwealth of Australia, Her Late Majesty, Queen Victoria, authorized and empowered the Governor-General to appoint any person or persons, jointly or severally, to be his Deputy or Deputies within any part of the Commonwealth, and in that capacity to exercise, during his pleasure, such of his powers and functions as he might deem it necessary or expedient to assign to him or them For copy of Letters Patent in question, see *Commonwealth Statutory Rules* 1901-1927, Vol IV, pp 3622-4, *Commonwealth Gazette*, 1901, pp 2-3

127. In reckoning the numbers of the people of the Commonwealth, or of a State or other part of the Commonwealth, aboriginal natives shall not be counted

Aborigines not to be counted in reckoning population

CHAPTER VIII ALTERATION OF THE CONSTITUTION

CHAPTER VIII ALTERATION OF CONSTITUTION

128.[a] This Constitution shall not be altered[b] except in the following manner –

Mode of altering the Constitution

The proposed law for the alteration thereof must be passed by an absolute majority of each House of the Parliament and not less than two nor more than six months after its passage through both Houses the proposed law shall be submitted in each State to the electors qualified to vote for the election of members of the House of Representatives

But if either House passes any such proposed law by an absolute majority, and the other House rejects or fails to pass it or passes it with any amendment to which the first mentioned House will not agree and if after an interval of three months the first mentioned House in the same or the next session again passes the proposed law by an absolute majority with or without any amendment which has been made or agreed to by the other House, and such other House rejects or fails to pass it or passes it with any amendment to which the first mentioned House will not agree, the Governor General may submit[c] the proposed law as last proposed by the first mentioned House and either with or without any amendments subsequently agreed to by both Houses to the electors in each State qualified to vote for the election of the House of Representatives

When a proposed law is submitted to the electors the vote shall be taken in such manner as the Parliament prescribes But until the qualification of electors of members of the House of Representatives becomes uniform throughout the Commonwealth, only one half the electors voting for and against the proposed law shall be counted in any State in which adult suffrage prevails

And if in a majority of the States a majority of the electors voting approve the proposed law, and if a majority of all the electors voting also approve the proposed law, it shall be presented to the Governor General for the Queen's assent

No alteration diminishing the proportionate representation of any State in either House of the Parliament, or the minimum number of representatives of a State in the House of Representatives, or increasing, diminishing, or otherwise altering the limits of the State, or in any manner affecting the provisions of the Constitution in relation thereto, shall become law unless the majority of the electors voting in that State approve the proposed law

GENERAL NOTES –(b) The following are the only laws altering the Constitution which have been passed by the Parliament and approved by the requisite majority of electors prior to the date of the preparation of this volume

Constitution Alteration (*Senate Elections*) 1906 (No. 1, 1907)
Constitution Alteration (*State Debts*) 1909 (No. 8, 1910)
Constitution Alteration (*State Debts*) 1928 (No. 1, 1929)

Copies of these laws are reprinted herein *infra* pp. 114-116 and in so far as they alter the Constitution textually, have been incorporated in this copy of the Constitution (see sections 13, 105, and 105A.)

For copies of all Bills which have been introduced into the Parliament of the Commonwealth, from 1901 to 1935 for the alteration of the Constitution and the Parliamentary history of each Bill, and (where submitted to the electors) the voting thereon, see Appendix D *infra*, pp 197-272.

(*) The only occasion upon which one House twice passed Bills to alter the Constitution (the interval required by this section having elapsed between the first and the second passage of the Bills), and the other House twice failed to pass the Bills was in 1914 when six Bills which had been passed by the Senate in 1911 and not passed by the House of Representatives were again passed by the Senate Upon the House of Representatives again failing to pass the Bills the Senate resolved that an Address should be presented to His Excellency the Governor-General requesting that His Excellency be pleased to submit the proposed laws to the Electors The Address was presented to His Excellency but the request was refused The proposed laws in question are contained in Appendix D to this volume see Bills Nos 26 to 31 inclusive and footnote to Bill No 26

NOTES OF CASES (a) Section cited as a reason why United States Cases relating to the immunity of instrumentalities should not be followed this section providing a much easier method of protection of the Commonwealth against the States than is provided by the corresponding provisions of the United States Constitution *In re Income Tax (No 4) Wollaston Case* (1902) 28 V L R 357 at p 389 8 A L R 188 at p 195 24 A L T 8 at p 69

As to whether Parliament may confer upon a Royal Commission power to compel persons to give evidence on matters incumbent on us to which is relevant only to a possible alteration of the Constitution under this section see decision of High Court in *Colonial Sugar Refining Co Ltd v Attorney-General of the Commonwealth* (1912) 15 C L R 182 18 A L R 429 and on appeal to the Privy Council *Attorney General for the Commonwealth v Colonial Sugar Refining Co Ltd* 1914 A C 237 17 C L R 644 20 A L R 22

SCHEDULE

OATH

I *A B*, do swear that I will be faithful and bear true allegiance to Her Majesty Queen Victoria Her heirs and successors according to law SO HELP ME GOD!

AFFIRMATION

I, *A B* do solemnly and sincerely affirm and declare that I will be faithful and bear true allegiance to Her Majesty Queen Victoria Her heirs and successors according to law

(NOTE.—*The name of the King or Queen of the United Kingdom of Great Britain and Ireland for the time being is to be substituted from time to time.*)

SUPPLEMENTARY NOTES OF CASES.

NOTE.—These notes are arranged under the following sub headings

Immunity of Instrumentalities and Implied Prohibition
Applicability of American and Canadian decisions
Constitution a compact between Australian colonies
Meaning of Act—how ascertained
General provisions as well as particular sections to be regarded
Meaning of terms in Constitution that in 1900
Regard to be had to laws modified by Constitution
Words to be given their plain and natural meaning
Regard to be had to substance rather than to form
Indirect effect and motive of Act irrelevant
Reference to draft Constitution Bills
Reference to Convention or Parliamentary debates
Maxims applicable in interpretation of Constitution
Distribution by Constitution of legislative executive and judicial powers
Extra-territorial operation of Commonwealth Act
Attorney-General, applications by for declarations of invalidity of Acts
Tests of validity of Acts
Onus on person assailing validity of Commonwealth Acts
Test of severability
Application of provisions of Constitution to Commonwealth and States
Power of the Legislature to delegate
Power of Commonwealth to pass criminal laws
Power of Commonwealth to pass *ex post facto* laws
Common law of the Commonwealth

✓ *Immunity of Instrumentalities and Implied Prohibition*

Held by the Full Court of the Supreme Court of Victoria (in a case relating to the liability of a Commonwealth public servant to pay State income tax upon his official salary earned within the State) that in view of the fact that in Australia the Crown has power to disallow Commonwealth and State Acts whereas in the United States no such power exists and that in the Commonwealth section 128 of the Constitution provides a much easier method of amending the Constitution than that which prevailed in the United States the United States doctrine of implied prohibitions is not applicable in the interpretation of the Commonwealth Constitution *In the Income Tax Acts* (No. 4) *Wolfenden's case* (1902) 28 V.L.R. 357, 8 A.L.R. 188, 24 N.S.W.L. 61.

Held by the High Court that when a State attempts to give to its legislative or executive authority an operation which if valid would fetter control or interfere with the free exercise of the legislative or executive power of the Commonwealth the attempt unless expressly authorized by the Constitution is to that extent invalid and inoperative *D'Emden v. Pedder* (1904) 1 C.L.R. 91; 10 A.L.R. (C.N.) 80. Held also that where the United States Constitution and the Constitution of the Commonwealth are similar the construction put upon the former by the Supreme Court of the United States may well be regarded by the High Court in construing the Constitution of the Commonwealth not as an infallible guide but as a most welcome aid and assistance. *Ibid.*

Held also that the fact that in the Commonwealth the Crown has the power of veto with respect to legislation does not render the principles of interpretation adopted in the case of United States Case *McCulloch v. Maryland* (1819) 4 Wheat. 316 inapplicable in the interpretation of the Commonwealth Constitution. *Ibid.*

Held by the High Court that the transfer by the Commonwealth by a vendor of land acquired by the Commonwealth for public purposes is an instrumentality of the Commonwealth and therefore exempt from State taxation under the rule laid down in *D'Emden v. Pedder*. *Commonwealth v. New South Wales* (1906) 3 C.L.R. 807, 12 A.L.R. 341.

Held by the Full Court of the Supreme Court of Victoria (per Hodges J.) (in a case relating to the liability of Commonwealth Ministers of the Crown to pay State income tax upon ministerial salaries and Parliamentary allowances earned within the State) that while the Full Court must in the conclusion of the High Court in *D'Emden v. Pedder supra* they were not bound by the reasoning of the High Court in that case *In re the Income Tax Acts* (No. 4) *Deakin and Lyne's cases* (1904) 29 V.L.R. 748; 10 A.L.R. 103; 25 N.S.W.L.R. 245. Held also that the judgment in *Wollaston's case* was quite consistent with the actual decision in *D'Emden v. Pedder* and that the decision in *Wollaston's case* should be followed. *Ibid.*

On appeal to the High Court decision of the Full Court reversed and principles laid down in *D'Emden v. Pedder* affirmed *Deakin v. Webb*, *Lyne v. Webb* (1904) 1 C.L.R. 585; 10 A.L.R. 237.

Application to the High Court for a certificate under s. 74 of the Constitution that the question in this case was one which ought to be determined by the King in Council refused by the High Court on the ground that it was not satisfied that there was any special reason why the certificate should be granted. *Deakin v. Webb*, *Lyne v. Webb* (1904) 1 C.L.R. 585 at p. 619; 10 A.L.R. 258.

Held by the Supreme Court of Victoria (Hodges J.) (in a further case relating to the liability of a Commonwealth public servant to pay State income tax upon his official salary earned within the State) that the Court was bound by the decision of the High Court in *Deakin v. Webb*, *Lyne v. Webb* and the officer was therefore liable to pay State income tax. Leave however granted by the Supreme Court to Webb, State Commissioner of Taxes to appeal direct to the Privy Council. *In re the Income Tax Acts*, *Outtrim's case*, 1905 V.L.R. 163; 13 A.L.R. 117; 26 N.S.W.L.R. 198.

Held by the Privy Council in reversing the decision of the Supreme Court of Victoria in *Outtrim's case* that the fact that Acts of the Victorian Parliament require the assent of the Crown destroyed the analogy claimed by the High Court to exist between the American and Australian systems of jurisprudence. Held also by the Privy Council that the presence in the Constitution of sections 106 and 107 did not seem to leave any room for implied prohibition and that the application to the Commonwealth Constitution of the principles of the American case of *McCulloch v. Maryland* should be rejected. *Webb v. Outtrim* 1907 A.C. 81; 4 C.L.R. 356; 13 A.L.R. (C.N.) 1.

Another case relating to the liability of a Commonwealth public servant to pay State income tax on his official salary earned within the State having been brought before Murray *D.C.J.* of New South Wales, it was held by the District Court following the decision of the Privy Council in *Webb v. Outtrim*, that the Commonwealth public servant was liable to pay the tax. Upon appeal to the High Court from this decision, it was held by the High Court (*per* Griffith, *C.J.*, Barton and O'Connor *JJ.*) that that Court was, by the Constitution the ultimate arbiter upon any question as to the limits *inter se* of the constitutional powers of the Commonwealth and those of any State or States or as to the limits *inter se*

Supplementary Notes of Cases—(continued).

Immunity of Instrumentalities and Implied Prohibition continued

of the constitutional powers of any two or more States unless it was of opinion that the question at issue in any particular case was one upon which it should submit itself to the guidance of the Privy Council *Baxter v Commissioners of Taxation (N S W)* (1907) 4 C L R 1087 13 A L R 313

Held (*per* the same Justices) that the High Court was not bound to follow the decision of the Privy Council in *Webb v Outtrim* but should follow its own considered decision in *Deakin v Webb*, *Lyne v Webb* unless upon a reconsideration of the question for whatever reason it should come to a different conclusion Held also that assuming the fact that the Privy Council had given a decision in direct conflict with the High Court on the same point to be a sufficient reason for a reconsideration of the whole matter by the High Court there was nothing in the reasons of the Judicial Committee to throw any new light on the question involved either with regard to the necessity for the application of the rule of implied prohibition laid down in *McCulloch v Maryland* and adopted in *Deakin v Webb* or as to the applicability of the rule to the particular question The rule in *D'Emden v Pedder* was accordingly reaffirmed *Ibid*

Held (*per* Isaacs J) that apart from any consideration of its history the words of s 74 are clear and strong enough to lead to the conclusion that any questions coming within the section the decision of the High Court was final and therefore the Court had a right to refuse to allow the decision of the Privy Council upon any such question but the respect and weight due to the judgment of the Privy Council made it the duty of the High Court under the circumstances to reconsider the question decided in *Deakin v Webb* 1 C L R 585 Further consideration in the light of the decision in *Webb v Outtrim* (1907) A C 81 leaves the authority of *D'Emden v Pedder* 1 C L R 585 unimpaired but the *Land and Income Tax Act* of New South Wales *considered apart from authority cannot be regarded as an infringement* of the rule of non interference laid down in the latter case *Ibid*

Held (*per* Higgins J) that the only diminution of the prerogative right of the King in Council to entertain appeals from all Courts in the Colonies and dependencies is that in cases involving such questions as are referred to the High Court by given jurisdiction there is to be no appeal from the High Court except by leave of the High Court and there is nothing in the Constitution to make the High Court the final authority on any kind of law The Act should not be extended by implication in the direction of infringing the prerogative rights of the Crown The King in Council being therefore still the appellate Court from the High Court and the High Court from which appeals can be brought to the King in Council it is the duty of the High Court to accept the decision of the King in Council as the final statement of the law The *Land and Income Tax Act* of New South Wales is not an interference with federal instrumentalities *Ibid*

Decision of Murray *C J* reversed by the High Court (Griffith *C J* Barton and O'Connor *JJ* Isaacs and Higgins *JJ* dissenting) *Ibid* Decision of Privy Council in the case of *Webb v Outtrim* 1907 A C 81 4 C L R 396 13 A L R (N S) 1 not followed *Ibid*

Application made to the High Court for a certificate that the case was one which ought to be determined by the Privy Council the main ground being that it was impossible within the Constitution to obtain a final and uniform settlement of the law on the questions

(*a*) whether the principle laid down in *McCulloch v Maryland* applied to the Australian Constitution

(*b*) whether the Victorian Income Tax Acts in so far as they applied to Commonwealth officers were an infringement of that principle and

(*c*) whether the Victorian Income Tax having effect after the salaries were paid was an interference with the salaries or emoluments

It was claimed by those applying for the certificate that the granting of the certificate was the only mode of putting in motion the machinery provided by the Constitution for the interpretation of the Constitution differing vitally and fundamentally from one another In application was unanimously refused by the High Court some of the Justices pointing out that the difficulty arising out of the conflicting decisions of two Courts of Appeal on this question could be met by the Federal Parliament legislating in two directions

(1) by making the appellate jurisdiction of the High Court exclusive of the appellate jurisdiction of the State Supreme Courts in some or all of the matters called federal jurisdiction and

(2) by making the grants to Commonwealth public servants subject to the right of the States to tax them

Flint v Webb (1907) 4 C L R 1178 13 A L R 348

By legislation passed in 1907 the Commonwealth adopted two existing systems By the *Judiciary Act* 1907 it made the jurisdiction of the High Court exclusive of that of the Supreme Courts of the States in all questions as to the limits *inter se* of the constitutional powers of the Commonwealth and those of any State or States or as to the limits *inter se* of the constitutional powers of any two or more States by providing for the automatic removal to the High Court of any cause pending in the Supreme Court of any State in which there had arisen any such question By the *Commonwealth Salaries Act* 1907 provision was made permitting the taxation by a State, under certain conditions of the official salaries of officers of the Commonwealth residing in that State and of the allowances of Commonwealth Ministers and Members of Parliament residing in that State (Validity of *Commonwealth Salaries Act* 1907 upheld in *Chaplin v Commissioner of Taxes for South Australia* (1911) 12 C L R 475 17 A L R 422)

After the passage of this legislation an application was made to the Privy Council for leave to appeal to the Privy Council from the judgment of the High Court in the case of *Baxter v Commissioners of Taxation (N S W) supra* and the leave was refused the Privy Council holding that the amount at stake was inconsiderable and that the controversy had been closed by the passage of the *Commonwealth Salaries Act* 1907 referred to above *Commissioners of Taxation (N S W) v Baxter* and *Webb v Flint*, 1908 A C 214 5 C L R 498

Question as to whether a local authority had power to make by laws binding on Commonwealth, discussed by High Court but decided on grounds not involving the interpretation of the Constitution *Roberts v Ahern* (1904) 1 C L R 406 10 A L R 162

As to whether a State may impose on a federal Officer a tax calculated on an income assumed from the annual value of the officer's residence see *R v Bowden* (1905) 1 Tas L R 149

As to whether the Tasmanian Rifle Association is an instrumentality of the Commonwealth, and as to whether a bequest to it is liable to taxation by the State see *Re Gardner*, (1910) 15 Tas L R 78

Held by the High Court (Griffith *C J* Barton and O'Connor *JJ*) that the rule of non-interference by States with the Commonwealth was reciprocal and applied to prevent attempted interference by the Commonwealth with State instrumentalities *Federated Amalgamated Government Railway and Tramway Service Association v New South Wales Railway Traffic Employees Association*, (1906) 4 C L R 488, 13 A L R 274.

Supplementary Notes of Cases—(continued).

Immunity of Instrumentalities and Implied Prohibition continued

Held also that the State Railways were functions of Government and that the *Commonwealth Conciliation and Arbitration Act* 1904 so far as it purported to affect State railways was *ultra vires* and void *Ibid*

Held by the High Court that the rule laid down in *D'Emden v Pedder* had no application to powers which are conferred upon the Commonwealth in express terms and which by their nature manifestly involve control of some operation of the State Government such as the power to make laws with respect to trade and commerce with other countries and with respect to corporations *Attorney General of New South Wales v Collector of Customs* (N S W) (1908) 5 C L R 818 14 A L R 516 See also *R v Sutton*, (1908) 5 C L R 789 14 A L R 307 special leave to appeal from the decision in the first mentioned case refused by the Privy Council *Attorney General of New South Wales v Collector of Customs N S W*, 1909 A C 345, 38 C L R 593

(Note The decision of the High Court in *Attorney General of New South Wales v Collector of Customs* (N S W) (*supra* overruled a previous decision to the contrary given by the Full Court of the Supreme Court of New South Wales in *Attorney General of New South Wales v Collector of Customs* (N S W) (1903) 3 S R (N S W) 115)

Held by the High Court that the Sydney Water supply and sewerage Board is in effect a Department of State Government and therefore exempt from the jurisdiction of the Commonwealth Court of Conciliation and Arbitration but that whatever be the position of a municipal corporation in respect of its strictly governmental functions a municipal corporation in so far as it engages in a trading enterprise e g the supply of electricity to those who choose to buy it is not in respect of such enterprise exempt from federal legislation under the rule laid down in *D'Emden v Pedder Federated Engine drivers and Firemen's Association of Australasia v Broken Hill Pty Co Ltd* (1911) 12 C L R 398 17 A L R 285 Doctrine of immunity of instrumentalities discussed by High Court *Federated Engine drivers and Firemen's Association of Australasia v Broken Hill Pty Co Ltd* (1911) 12 C L R 398 at pp 420 3 431 3 439 40 17 A L R 285 at pp 294 5 301 2 309 308

Held by the High Court that a municipal corporation carrying on trading operations is subject to the jurisdiction and award of the Commonwealth Court of Conciliation and Arbitration *Federated Engine-drivers and Firemen's Association of Australasia v Broken Hill Pty Co Ltd* (1913) 16 C L R 245 19 A L R 177

Held by *the High Court* (*Griffith C J* and Barton *J* dissenting) that municipal corporations established under State law are not with regard to the making, maintenance, control or lighting of public streets instrumentalities of a State government and the functions are not in respect of such operations exempt from Commonwealth legislation under s 51 (xxxv) of the Constitution *Federated Municipal and Shire Council Employees Union of Australasia v Melbourne Corporation* (1919) 27 C L R 508 25 A L R 69

Held by the High Court (Griffith C J Gavan Duffy Powers and Rich *JJ* Higgins *J* dissenting) that the operations of the state of Victoria and New South Wales were not subject to the jurisdiction of the Commonwealth Court of Conciliation and Arbitration in relation to the employment of persons in wheat dumping and stacking in connexion with the Wheat Marketing Scheme the operations of the States in this respect being governmental and not trading *Australian Workers Union v Attitude Milling Co Ltd* (1919) 26 C L R 466 25 A L R 43

As to whether Commonwealth legislation which is valid if enacted under the rule in *D'Emden v Pedder* see *Attorney General for Queensland v Attorney General for the Commonwealth* (1915) 20 C L R 148, at pp 164 21 A L R 221 at p 24 (A further case *infra* *Adelaide Steamship Company Limited* (1920) 28 C L R at p 11 C A L R at pp 310)

In 1920 there was brought before the High Court a case involving questions as to whether the *Commonwealth Conciliation and Arbitration Act* 1904 1911 is validly made in relation to matters existing between certain trading organizations of States and their employees

In its judgment in the case (known as the Engineers' Case) the Court (Knox *C J*, Isaacs Higgins Rich and Starke *JJ* Gavan Duffy *J* dissenting) decided that the Act in question applied to disputes where the State was the employer which it is well established was the employer would be industrial disputes within the meaning of s 51 (xxxv) of the Constitution *Amalgamated Society of Engineers v Adelaide Steamship Co Ltd* (1920) 28 C L R 129 26 A L R 587

In the same case the High Court considered at length the question of the principles to be applied in the interpretation of the Constitution The Court applied as rules of construction to be applied in construing the Constitution the rules applied by the Privy Council in *Cobb & Co Ltd v Kroger* (*supra*) and *Attorney General for the Commonwealth v Colonial Sugar Refining Co Ltd* 3 C L R 644 20 A L R 22)

In addition the Court decided that it having once been ascertained in accordance with the rules of construction applied by the Privy Council in those cases that a power has been granted to the Commonwealth Parliament by the Constitution no implication of a prohibition against the exercise of that power can arise, nor can a possible abuse of the power narrow its limits

The Court also decided in this case that

(*a*) The *Commonwealth of Australia Constitution Act* being passed by the Imperial Parliament for the express purpose of regulating the several exercise of legislative executive and judicial power throughout Australia is by its own inherent force binding on the Crown to the extent of its operation

(*b*) The Constitution as it exists for the time being dealing expressly with sovereign functions of the Crown in its relation to the Commonwealth and the States necessarily so far binds the Crown and laws validly made under the authority of the Constitution bind so far as they purport to do so both the Crown in right of the States and subjects

(*c*) Where the affirmative terms of a power stated by the Constitution would validly sustain an Act of the Parliament of the Commonwealth it rest upon those who rely on some limitation or restriction of the power to indicate it in the Constitution

(*d*) Section 107 of the Constitution continues the previously existing powers of the Parliaments of the States to legislate with respect to State exclusive powers and State powers which are concurrent with Commonwealth powers but does not reserve any power from the Commonwealth which falls fairly within the explicit terms of an express grant in s 51, as that grant is reasonably construed unless that reservation is as explicitly stated

(*e*) Section 109 of the Constitution gives supremacy to every Commonwealth Act over every State Act whether the latter be passed under a concurrent power or under an exclusive power if any provisions in the two conflict

(*f*) The rule laid down in *D'Emden v Pedder* (*supra*) on the basis of the supremacy of Commonwealth legislation created by s 109 of the Constitution is sound

Supplementary Notes of Cases—(continued).

Immunity of Instrumentalities and Implied Prohibition—continued.

In the same case the Court overruled the cases of *Deakin* v *Webb* and *Baxter* v *Commissioner of Taxation* (N S W) (*supra*) in so far as they decided that the taxation by a State of money received by a Federal officer as salary from the Commonwealth is invalid as being an interference with a Federal instrumentality. In addition the Court overruled the case of *Federated Amalgamated Government Railway and Tramway Service Association* v *New South Wales Railway Traffic Employees Association* (*supra*) (see *Amalgamated Society of Engineers* v *Adelaide Steamship Co Ltd* reported in (1920) 28 C L R 129, 26 A L R 337).

An application was made to the High Court on behalf of the Minister for Trading Concerns Western Australia for a certificate under s 74 of the Constitution that the matter in issue in this case was one which ought to be determined by the Privy Council. But the application was refused by the High Court (*Amalgamated Society of Engineers* v *Adelaide Steamship Co Ltd* (1921) 29 C L R 406).

The Minister for Trading Concerns Western Australia and the Attorney-General for Tasmania subsequently petitioned the Privy Council to grant special leave to appeal from the decision of the High Court, but leave was not granted (*Minister for Trading Concerns* v *Amalgamated Society of Engineers* 1923 A C 170).

In the Engineers case (*supra*) the High Court laid it down that "it is the chief and special duty of this Court faithfully to expound and give effect to [the Constitution] according to its own terms, finding the intention from the words of the compact, and upholding it throughout precisely as framed" (28 C L R at p 142, 26 A L R at p 39).

It decided further that "for the proper construction of the Australian Constitution it is essential to bear in mind two cardinal features of our political system which are interwoven in its texture," namely, "the common sovereignty of all parts of the British Empire, and the principle of responsible government" (28 C L R at p 146, 26 A L R at p 141).

The Court cited with approval certain observations of Lord Haldane, L C, in *Tucker & Sons Ltd* v *London Society of Compositors* (1913 A C 107 at p 113) to the effect that "in endeavouring to place the proper interpretation on the sections of the Statute . . . I propose therefore to exclude consideration of everything excepting the state of the law as it was when the statute was passed, and the light to be got by reading it as a whole before attempting to construe any particular section, subject to this consideration I think that the only safe course is to read the language of the statute in what seems to be its natural sense" (28 C L R at p 149, 26 A L R at p 142). Also the principles stated by Lord Selborne in *Ex p Lorrah* 3 App Cas 889 at pp 904, 905, that "the established Courts of Justice when a question arises whether the prescribed limits [of a legislative power] have been exceeded must of necessity determine that question, and the only way in which they can properly do so is by looking to the terms of the instrument by which ultimately the legislative powers were created, and by which negatively they are restricted" (28 C L R at p 149, 26 A L R at p 42).

The foregoing case *Amalgamated Society of Engineers* v *Adelaide Steamship Co Ltd* was at the date of the preparation of this volume the leading case upon the subject of the principles of interpretation of the Constitution, but subsequently to the decision of that case the following further cases were decided, dealing with the application of Commonwealth laws and awards to State instrumentalities, or the application of State laws to Commonwealth instrumentalities: *Merchant Service Guild of Australasia* v *Commonwealth Steamship Owners' Association* (No 2) (1920) 28 C L R 436, 27 A L R 161; *Dawson* v *Federal Commissioner of Taxation* (1923) 29 A L R 129; *Perrie* v *M'Farlane* (1925) 36 C L R 170, 31 A L R 8; *Australian Railways Union* v *Victorian Railways Commissioners* (1930) 44 C L R 319, 37 A L R 37; and *Stuart Robertson* v *Lloyd* (1932) 47 C L R 492, 38 A L R 609, 5 A B C 267.

The following other cases on general principles of interpretation also call for mention:

Applicability of United States and Canadian decisions

Questions of the applicability in the interpretation of the Commonwealth Constitution, of decisions on the United States and Canadian Constitutions discussed: In re Income Tax Acts (No 4) Wollaston's Case (1962) 28 V L R 357, at pp 378, 388, 393; 8 A L R 188, at pp 193, 7, 199, 24 A L J 84, at pp 67, 71, 72; *Ex parte Goldstein* (1903) 3 S R N S W 260 at p 264; *D'Emden* v *Pedder* (1904) 1 C L R 91 at pp 111, 8, 10; 10 A L R (C N) 30 at p 31; *Municipal Council of Sydney* v *Commonwealth* (1904) 1 C L R 208, at pp 237, 8, 239, 40; 10 A L R (C N) 29; *Deakin* v *Webb*, *Lane* v *Webb* (1904) 1 C L R 585 at pp 605, 10, 623; 10 A L R 237 at pp 239, 44; *Baldwin* v *Keenan* (1906) 4 C L R 395 at p 401; 13 A L R 108 at p 160; *Federated Amalgamated &c Association* v *New South Wales Railway Traffic Employees Association* (1906) 4 C L R 488 at p 540; 13 A L R 274 at p 281; *Webb* v *Outtrim* 1907 A C 81 at pp 88, 91; 4 C L R 356 at pp 358, 61; 13 A L R (C N) 1 at pp 1–2; *Baxter* v *Commissioners of Taxation*, (N S W) (1907) 1 C L R 1087 at pp 1109, 13, 1157, 60, 1164–6; 13 A L R 513 at pp 522, 31, 540, 1, 543, 4; *Attorney General of New South Wales* v *Collector of Customs, New South Wales* (1908) 5 C L R 818 at pp 853, 5; 14 A L R 510 at pp 528, 9; *R* v *Barger* (*Commonwealth* v *McKay*) (1908) 6 C L R 41 at pp 67, 8, 14; A L R 374 at p 378; *Attorney-General for New South Wales* v *Brewery Employees Union of New South Wales* (1908) 6 C L R 469, at p 530, 14 A L R 365 at p 382; *Federated Sawmill Timber Yard and General Woodworkers Employees Association of Australasia* v *James Moore & Son Pty Ltd* (1909) 8 C L R 465 at pp 508–10, 548–50, 15 A L R. 774 at pp 389, 403, 4; *Attorney General for the Commonwealth* v *Colonial Sugar Refining Co Ltd*, 1914 A C 237 at pp 252, 4, 17 C L R 644 at pp 651, 2, 20 A L R 22 at p 26; *New South Wales* v *Commonwealth* (1915) 20 C L R 54 at p 79, 21 A L R 128 at p 140; *Duncan* v *Queensland*, (1916) 22 C L R 556, at p 603, 22 A L R 405 at p 484; *Amalgamated Society of Engineers* v *Adelaide Steamship Co Ltd* (1920) 28 C L R 129 at pp 146, 52, 168, 71, 26 A L R 337 at pp 341, 8, 449–50; *Federated Municipal and Shire Council Employees' Union of Australia* v *Melbourne Corporation*, (1919) 26 C L R 508, at p 523, 25 A L R 399 at pp 404–5; *R* v *Turner*; *Ex parte Marine Board of Launceston*; *Tasmania* v *Commonwealth* (1927) 39 C L R 411, at pp 445–6, 33 A L R 174, at pp 185–6; *Ex parte Nelson* (No 1) (1928) 42 C L R 209 at pp 230 6, 35 A L R 21 at pp 27–9; *Huddart Parker Ltd* v *Commonwealth* (1931) 44 C L R 492 at pp 524 6, 37 A L R 22 at pp 32–3. See also per Latham C J and Starke J in *R* v *Burgess*; *Ex parte Henry* (judgment delivered 10th November, 1936).

Constitution a compact between Australian Colonies

As to the Constitution being a compact between the six Australian colonies which formed the Commonwealth, see *Cowans* v *Commonwealth* (1906) 3 C L R 529 at p 599, 12 A L R 175, at p 186; *Federated Amalgamated Government Railway and Tramway Service Association* v *New South Wales Railway Traffic Employees Association*, (1906) 4 C L R 488, at p 534, 13 A L R 279 at p 279; *Amalgamated Society of Engineers* v *Adelaide Steamship Co Ltd* (1920) 28 C L R 129 at p 142; 26 A L R 337, at p. 339.

Supplementary Notes of Cases—(continued).

Meaning of Act how ascertained

Held by the High Court (Barton *J.*) that the spirit or meaning of an Act should be gathered from the instrument itself *Tasmania* v *Commonwealth and Victoria* (1904) 1 C L R 329 at pp 348 358 9, 10 A L R (C N) 41 at p 42

General provisions as well as particular sections to be regarded

Held by the High Court (Griffith *C J.*) that in construing a Constitution like the Commonwealth Constitution it is necessary to have regard to its general provisions as well as to particular sections *Peterswald* v *Bartley*, (1904) 1 C L R 497 at p 507 10 A L R (C N) 60

Meaning of terms in Constitution that in 1900

Held by the High Court that the meaning of terms used in the Constitution must be ascertained by their signification in 1900 *Attorney General for New South Wales* v *Brewery Employés Union of New South Wales*, (1908) 6 C L R 469 14 A L R 565 See also *Australian Boot Trade Employees Federation* v *Whybrow & Co*, (1910) 11 C L R 311 at p 3 16 A L R at p 217 *R* v *President of Commonwealth Court of Conciliation and Arbitration and Merchant Service Guild of Australasia Ex parte William Holyman & Sons Ltd* (1914) 18 C L R 273 20 A L R 429 *Federated Municipal and Shire Council Employees Union of Australia* v *Melbourne Corporation* (1919) 26 C L R 508 at p 543 25 A L R 369 at p 323 *Burwood Cinema Ltd* v *Australian Theatrical and Amusement Employees Association* (1925) 35 C L R 528 at p 535 31 A L R 285 at p 286 See also per Cathcart C J in *R* v *Burgess Ex parte Henry* (judgment delivered 10th November 1926)

Per Griffith *C J* Whatever the term taxation meant in 1900 it must mean so long as the Constitution exists so far as regards the nature and extent of the power conferred on the Parliament with respect to it *R* v *Barger Commonwealth* v *McKay* (1908) 6 C L R 41 at p 68 14 A L R 374 at p 378

Per Isaacs Gavan Duffy Powers and Rich *JJ* The phrase industrial disputes extending beyond the limits of any one State is to be construed according to the natural and ordinary meaning of the words as understood at the time of the passing of the *Constitution Act* *R* v *Commonwealth Court of Conciliation and Arbitration President of) ex parte Merchant Service Guild of Australasia Ex parte William Holyman and Sons Ltd* (1914) 18 C L R 273 at p 285 20 A L R 429 at p 434

As to the use of extraneous facts existing at the date of enactment of the Constitution in the interpretation of the Constitution see *Jones* v *Commonwealth* (1926) 37 C L R 1 32 A L R 333

Regard to be had to laws modified by Constitution

Per Griffith *C J* Barton and O'Connor *JJ* The rule that in construing a statute regard must be had to the existing laws which it modifies by it and that in construing a contract regard must be had to the facts and circumstances existing at the date of the contract are applicable in the construction of such a Constitution as the Commonwealth Constitution which not only is to Act of the Imperial Parliament but embodies a compact between the six Australian Colonies *Federated Engineers and Gasworkers Union of Australasia Ex parte Adelaide Steamship Co Ltd* (1913) 17 C L R 633 at p 651 19 A L R 43 *Australasian Temperance and General Mutual Life Assurance Society Ltd* v *Howe* (1922) 31 C L R 290 at p 294 29 A L R 46 at p 48

Regard to be had to substance rather than to form

Held by the High Court that in determining whether a particular law is or is not within the power of the Commonwealth Parliament to enact regard must be had to its substance rather than to its literal form *Peterswald* v *Bartley* (1904) 1 C L R 497 at p 511 10 A L R (C N) at p 66 *R* v *Barger Commonwealth* v *McKay* (1908) 6 C L R 41 14 A L R 374

Intended effect and motive of Act irrelevant

Held by the High Court that the circumstance that an indirect effect may be produced by the exercise of an admitted power of legislation is irrelevant to the question whether the legislature is competent to prescribe the same effect by direct law So are the motive which actuated the legislature and the ultimate end desired to be attained *R* v *Barger Commonwealth* v *McKay* (1908) 6 C L R 41 14 A L R 374 See also *Osborne* v *Commonwealth* (1911) 12 C L R 321 at pp 351 3 363 368 400 2 374 17 A L R 242, at pp 245, 248 9 251 4 255 260

Reference to draft Constitution Bills

Held by the High Court that as matter of history of legislation the draft Constitution Bills which were prepared under the authority of the Parliaments of the several States may be referred to *Tasmania* v *Commonwealth and Victoria*, (1904) 1 C L R 329 at p 361

Reference to Convention or Parliamentary debates

Held by the Full Court of the Supreme Court of Victoria that reference to the Convention debates cannot be permitted *Stephens* v *Abrahams* (No 2) (1904) 29 V L R 229 at pp 230 241 247 9 A L R 86, at p 92, 24 A L T 216 at p 219

Held similarly by the High Court *Municipal Council of Sydney* v *Commonwealth* (1904) 1 C L R 208, at p 213, *Tasmania* v *Commonwealth and Victoria* (1904) 1 C L R 329 at p 334

Remarks of Lord Haldane (when a member of the House of Commons) upon the motion for leave to introduce the Commonwealth Constitution Bill into that House cited by the High Court *Amalgamated Society of Engineers* v *Adelaide Steamship Company Ltd* (1920) 28 C L R 129 at p 147, 26 A L R 137 at p 141

Maxims applicable in interpretation of Constitution

Held by the High Court that the maxims *expressum facit cessare tacitum* and *expressio unius est exclusio alterius* are applicable to the Constitution in a greater rather than in a lesser degree than in the construction of ordinary contracts or ordinary Statutes *Federated Amalgamated Government Railway and Tramway Service Association* v *New South Wales Railway Traffic Employees Association* (1906) 4 C L R 488 at p 534; 13 A L R 273, at p 279 See also *Australian Boot Trade Employees Federation* v *Whybrow & Co* (1910) 10 C L R 266, at pp 291 293 16 A L R 185 at pp 193 4 *Le Mesurier* v *Connor* (1929) 42 C L R. 481, at p 512, 36 A L R 41 at p 52 1 A B C 97 at p 128

Supplementary Notes of Cases—(continued).

Distribution by Constitution of Legislative Executive and Judicial Powers.

Effect of the distribution of powers between the Legislature the Executive, and the Judiciary discussed by the High Court *New South Wales* v *Commonwealth* (1915) 20 C L R 54, at pp 88–90 108, 21 A L R 128 at pp 144 4 151 *In re Judiciary and Navigation Acts*, (1921) 29 C L R 257, at p 264 *27 A L R 193 at p 194 Victorian Stevedoring and General Contracting Co Pty Ltd* and *Meakes* v *Dignan* (1931) 46 C L R 73 at pp 84 86 89 102 38 A L R 22 at pp 24 26, 27–32 See also cases on the judicial power (s 71 note (*b*) *supra* pp 9 10) and cases on the power of the Legislature to delegate (Supplementary Notes *infra* p 115)

Extra Territorial Operation of Commonwealth Acts

Question of the extra-territorial operation of Commonwealth Acts discussed by High Court *Robtelmes* v *Brenan*, (1906) 4 C L R 395 at pp 404 411 3 4 20 1 13 A L R 168 at pp 171, 173–4 177 *Merchant Service Guild of Australasia* v *Commonwealth Steamship Owners' Association*, (1916) 10 C L R 664 at pp 676 8 689 701 2 19 A L R 456 at pp 465 6 469 484 *Amalgamated Society of Engineers* v *Adelaide Steamship Co Ltd* (1920) 28 C L R 129 at p 152 26 A L R 337, at p 352 *Merchant Service Guild of Australasia* v *Commonwealth Steamship Owners' Association* (No 3), (1920) 28 C L R 491 at p 504 27 A L R 213 at p 220 *Trustees Executors and Agency Co Ltd* v *Federal Commissioner of Taxation* (1933) 49 C L R 220 at pp 230 *et seq* 34 A L R 367 at pp 369 *et seq* *R* v *Burgess Ex parte Henry* (judgment delivered 10th November 1936)

Attorney-General Application by for Declarations of Invalidity of Acts

As to the right of the Attorney-General of the Commonwealth to maintain an action against a State *for a declaration of the invalidity of an Act of the State* or the right of the Attorney-General of a State to maintain an action against the Commonwealth or another State for a declaration of the invalidity of an Act of the Commonwealth or of that other State see *Attorney-General for New South Wales* v *Brewery Employees Union of New South Wales* (1908) 6 C L R 469 at pp 498 500 501 520 548–553 557 8 597–8 14 A L R 565 at pp 570 578 580 591 592 3 607 8 *Commonwealth* v *Queensland* (1920) 29 C L R 1 at pp 7 11 13 23 27 A L R 73 at pp 75 77 78 80 *Lorimer* v *Victoria* (1935) 52 C L R 157 at pp 165 171 178 186 8 41 A L R 137 at pp 139 140 146 147 *Attorney-General for Victoria* v *Commonwealth* (1934) 52 C L R 533 at pp 550 560 564 565 11 A L R 246 at pp 250, 251–2 258

Tests of validity of Acts

Per Isaacs J It is impossible to regard the mere written words of the Constitution as affording the only tests of validity The written words have to take into account the circumstances of the moment and the extent of constitutional development The doctrine of responsible government for instance is invisibly but none the less extraordinarily and powerfully interwoven with the texture of the written word, and any interpretation of the document which disregarded the implication of that doctrine would be false and misleading *Commonwealth* v *Colonial Combing Spinning and Weaving Co Ltd* (1922) 31 C L R 421, at p 446 29 A L R 178 at p 146

Onus on person asserting validity of Commonwealth Acts

As to the burden imposed upon those who affirm the capacity of the Commonwealth to pass an Act which prior to Federation could have been passed by the States (then Colonies) or an Act the validity of which is challenged see *Federated Amalgamated Government Railway and Tramway Service Association* v *New South Wales Railway Traffic Employés Association* (1906) 4 C L R 488 at p 547 13 A L R 273, at p 284 *Attorney General for the Commonwealth* v *Colonial Sugar Refining Co Ltd* 1914 A C 237, at p 250 17 C L R 644 at p 655 20 A L R 22 at p 25 *Federal Flour Mills and Bakers' Association of Australasia* v *Colonial Sugar Refining Co Ltd* (1916) 22 C L R 103 at p 108 22 A L R 328 at p 329 *Amalgamated Society of Engineers* v *Adelaide Steamship Co Ltd* (1920) 28 C L R 129 at p 154 26 A L R 337 at p 344 *Ex parte Walsh and Johnson* *In re Yates* (1925) 37 C L R 36, at p 58, 32 A L R 46 at p 50

Test of Severability

As to the test to be applied in determining whether the invalid portion of an Act is severable from the rest of the Act, see *Federated Amalgamated Government Railway and Tramway Service Association* v *New South Wales Railway Traffic Employees Association* (1906) 4 C L R 488 13 A L R 273 *R* v *Barger*, *Commonwealth* v *McKay* (1908) 6 C L R 41 14 A L R 374 *Attorney-General for New South Wales* v *Brewery Employees Union of New South Wales* (1908) 6 C L R 469 at pp 518 530 545 8 14 A L R 565 at pp 578 582 587 9 *R* v *Commonwealth Court of Conciliation and Arbitration* *Ex parte Whybrow & Co* (1910) 11 C L R 1 16 A L R 375 *Australian Boot Trade Employés' Federation* v *Whybrow & Co* (1910) 11 C L R 311 16 A L R 31 *Owners of SS Kalibia* v *Wilson* (1910) 11 C L R 689 17 A L R 410 *Osborne* v *Commonwealth* (1911) 12 C L R 321, 17 A L R 242 *Attorney-General of the Commonwealth* v *Colonial Sugar Refining Co Ltd* 1914 A C 237, at p 257, 17 C L R 644, at p 656 20 A L R 22 at pp 27 8 *New South Wales* v *Commonwealth* (1915) 20 C L R 54, at pp. 65, 87 110 21 A L R 128 at pp 134 141 152 *Waterside Workers' Federation of Australia* v *J W Alexander Ltd* (1918) 25 C L R 434 24 A L R 341 *McArthur Ltd* v *State of Queensland*, (1920) 28 C L R 530 at p 559 27 A L R 130 at p 141 *British Imperial Oil Co Ltd* v *Federal Commissioner of Taxation* (1925) 35 C L R 422 31 A L R 129 *Federal Commissioner of Taxation* v *Australian Texselated Tile Co Pty Ltd* (1925) 36 C L R 119 31 A L R 218 *Committee of Direction of Fruit Marketing* v *Collins*, (1925) 36 C L R 410 at pp 417 418 9 422 31 A L R 322 at pp 324, 325 326, *Roughley* v *New South Wales* *Ex parte Isaac* (1928) 42 C L R 162 at pp 186 191 206–9; 35 A L R 1 at pp 8 10 16 7 *Lawson & Co Pty Ltd* v *Queensland (No 2)* (1935) 51 C L R 677, at pp 686–8, 41 A L R 114 at p 116

As to the extent to which the question of severability is affected by legislation such as that contained in s 15A of the *Acts Interpretation Act* 1901 1930 see *Newcastle and Hunter River Steamship Co Ltd* v *Attorney-General for the Commonwealth* (1921) 29 C L R 357 27 A L R 373, *Australian Railways Union* v *Victorian Railways Commissioners* (1930) 44 C L R 319 37 A L R 37, *Huddart Parker Ltd* v *Commonwealth* (1931) 44 C L R 492 37 A L R 22

Application of provisions of Constitution to Commonwealth and States

Held by the Privy Council that the Constitution, when enacting a section applying only to the Commonwealth or the States exclusively indicates that intention in clear terms *James* v *Commonwealth*, 1936 A C 578, 55 C L R 1, 42 A L R 334

Supplementary Notes of Cases—continued.

Power of the Legislature to Delegate

Held by the High Court that s. 52 (paragraph (*j*) of the *Customs Act* 1901 which provides that all goods the importation of which shall be prohibited by proclamation shall be prohibited imports—is not a delegation of legislative power but conditional legislation and is within the power conferred on Parliament by s. 51, sub-sections (i) and (ii) of the Constitution *Barker v. Ah Hang* (1909) 8 C.L.R. 626, 15 A.L.R. 603.

As to the power of the Parliament to confer on the Governor-General in Council power by proclamation to specify acts or transactions which are to be deemed trading with the enemy see *Elsbach Light Co. of Australasia Ltd. v. Commonwealth*, (1916) 22 C.L.R. 208, 22 A.L.R. 398.

As to the power of the Parliament to confer on the Governor-General in Council power to make regulations to give effect to the Treaty of Versailles see *Roche v. Kronheimer* (1921) 29 C.L.R. 329, 27 A.L.R. 254.

As to the power of the Parliament to confer on the Minister for Customs power to specify the goods to which a section of the *Customs Tariff (Industries Preservation) Act* 1921-1925 shall apply see *Volt Bros. & Co. Ltd. v. Barclay* (1925) 36 C.L.R. 20, 31 A.L.R. 256.

As to the power of the Parliament of the Commonwealth to delegate its functions under s. 51 (i) to any Board or person and in particular to a State Board see *James v. Commonwealth* (1928) 41 C.L.R. 442, at pp. 458, 460.

As to the power of the Parliament to confer on the Governor-General in Council power to make regulations (not inconsistent with the *Trans-Australian Railway Act* 1912-1918) which notwithstanding anything in any other Act but subject to the *Acts Interpretation Act* 1901-1918 and the *Acts Publication Act* 1904-1918 shall have the force of law with respect to the employment of transport workers see *Huddart Parker Limited v. Commonwealth* (1921) 44 C.L.R. 492, 37 A.L.R. 22; *Peterson Stevedoring and General Contracting Co. Pty. Ltd. v. Mate of the Dingo* (1924) 40 C.L.R. 380, 38 A.L.R. 22.

Held by the High Court that s. 13 of the *Dried Fruits Export Control Act* 1924-1933 which provides that for the purpose of enabling the Board effectively to control the export and the sale and distribution after export of Australian dried fruits the Governor-General may by proclamation prohibit the export from the Commonwealth of any dried fruits except in accordance with a licence issued by the Minister subject to such conditions and restrictions as are prescribed after recommendation to the Minister by the Board contains no improper delegation of the legislative powers of the Commonwealth *Crouch v. Commonwealth* (1933) 51 C.L.R. 60, 41 A.L.R. 165.

Power of Commonwealth to pass criminal laws

Held by the Full Court of the Supreme Court of Victoria that the general power of the Federal Parliament includes a right to make laws with respect to criminal sanctions for the protection of the property of the Commonwealth even though that property might be more adequately protected by State law *R. v. Dolan*, *R. v. Schiffmann* [1919] V.L.R. 112, 24 A.L.R. (Jo.) 102, 40 A.L.R. (Jo.) 156.

Held by the High Court that it is within the constitutional powers of the Commonwealth to penalize all incidents to current contraventions of any law of the Commonwealth validly enacted *Graziers Association of New South Wales v. Labor Daily Ltd.* (1930) 44 C.L.R. 1.

Per Rich J. The Parliament of the Commonwealth has power to prohibit Associations which by their constitutions or propaganda advocate or encourage the overthrow of the Constitution of the Commonwealth by revolution or of the established Government of the Commonwealth by force or violence *R. v. Hush*, *Ex parte Devanny* (1932) 48 C.L.R. 487, at p. 500.

Power of Commonwealth to pass ex post facto laws

As to the power of the Parliament to validate the collection of customs duties retrospectively, see *Colonial Sugar Refining Co. Ltd. v. Irving* [1905] St.R.Qd. 241, [1905] A.C. 369, at p. 406.

As to whether the Parliament has power to make unlawful an act which was lawful at the time when it was done see *Donaldson v. Broomby* (1904) 1 C.L.R. 91, at p. 102, 10 A.L.R. (C.N.) 40, at p. 41.

As to whether a regulation can have a retrospective effect with respect to liability which had accrued before it was made see *Sandell v. Federal Commissioner of Land Tax* (1) 12 C.L.R. 653, at p. 665.

Question of the power of the Commonwealth to pass *ex post facto* laws discussed by High Court *Federated Engineers and Employers Association of Australia v. Victorian Hall Ltd. (No. 2)* (1913) 16 C.L.R. 245, 19 A.L.R. 177; *R. v. Kelly* (1915) 20 C.L.R. 425, 21 A.L.R. 405; *Ex parte Walsh and Johnson, In re Yates* (1925) 37 C.L.R. 36, at pp. 82, 83, 84, 85, 31 A.L.R. 10, at pp. 40, 41, 42, 43, 60, 61, 62, 66, 80.

Common law of the Commonwealth

As to whether there is a common law of the Commonwealth see *Chester v. Blackwood* (1904) 1 C.L.R. 39, at pp. 57, 59, 64, 76, 77; *Attorney-General for the Commonwealth v. Colonial Sugar Refining Co. Ltd.* 1914 A.C. 237, at pp. 256, 257, 17 C.L.R. 644, at p. 655, 20 A.L.R. 22, at p. 27; *R. v. Kirkman* (1915) 20 C.L.R. 425, at pp. 433, 437, 444, 453, 21 A.L.R. 105, at pp. 107, 108, 111, 112, 115.

CONSTITUTION ALTERATION (SENATE ELECTIONS).

No. 1 of 1907.

An Act to alter the provisions of the Constitution relating to the Election of Senators.

[Assented to 3rd April, 1907]

BE it enacted by the King's Most Excellent Majesty, the Senate, and the House of Representatives of the Commonwealth of Australia, with the approval of the electors as required by the Constitution, as follows

Short title

1 This Act may be cited as *Constitution Alteration (Senate Elections)* 1906

Rotation of senators

2. Section thirteen of the Constitution is altered

(*a*) by omitting the words "the third year," and inserting in lieu thereof the words "three years",

(*b*) by omitting the words "the sixth year," and inserting in lieu thereof the words "six years"

(*c*) by omitting the words "in the year at the expiration of which," and inserting in lieu thereof "within one year before",

(*d*) by omitting the word "January" wherever it occurs, and inserting in lieu thereof the word 'July"

Extension of terms of service of certain senators

3 -(1) The terms of service of the senators whose places would, but for this Act, become vacant at the expiration of the year One thousand nine hundred and nine are extended until the thirtieth day of June One thousand nine hundred and ten

(2) The terms of service of the senators whose places would, but for this Act, become vacant at the expiration of the year One thousand nine hundred and twelve are extended until the thirtieth day of June One thousand nine hundred and thirteen

Beginning of term of service of senators elected in 1906 not altered

4 This Act shall not be taken to alter the time of beginning of the term of service of any senator elected in the year One thousand nine hundred and six

CONSTITUTION ALTERATION (STATE DEBTS).

No. 3 of 1910.

An Act to alter the provisions of the Constitution relating to the Public Debts of the States.

[Assented to 6th August, 1910.]

Preamble

BE it enacted by the King's Most Excellent Majesty, the Senate, and the House of Representatives of the Commonwealth of Australia, with the approval of the electors as required by the Constitution, as follows:

Short title

1. This Act may be cited as *Constitution Alteration (State Debts)* 1909.

Alteration of s. 105

2. Section one hundred and five of the Constitution is altered by omitting the words "as existing at the establishment of the Commonwealth".

CONSTITUTION ALTERATION (STATE DEBTS).

No. 1 of 1929.

An Act to alter the Constitution by inserting therein further Provisions relating to the public debts of the States and the borrowing of money by the Commonwealth and the States.

[Assented to 13th February, 1929.]

Preamble. BE it enacted by the King's Most Excellent Majesty, the Senate, and the House of Representatives of the Commonwealth of Australia, with the approval of the electors, as required by the Constitution, as follows :--

Short title. 1. This Act may be cited as *Constitution Alteration (State Debts)* 1928.

2. The Constitution is altered by inserting after section one hundred and five the following section.

Agreements with respect to State debts. "105A (a) (1.) The Commonwealth may make agreements with the States with respect to the public debts of the States, including -

(*a*) the taking over of such debts by the Commonwealth ;

(*b*) the management of such debts.

(*c*) the payment of interest and the provision and management of sinking funds in respect of such debts :

(*d*) the consolidation, renewal, conversion, and redemption of such debts ;

(*e*) the indemnification of the Commonwealth by the States in respect of debts taken over by the Commonwealth ; and

(*f*) the borrowing of money by the States or by the Commonwealth, or by the Commonwealth for the States.

"(2.) The Parliament may make laws for validating any such agreement made before the commencement of this section.

"(3.) The Parliament may make laws for the carrying out by the parties thereto of any such agreement.

"(4.) Any such agreement may be varied or rescinded by the parties thereto.

"(5.) Every such agreement and any such variation thereof shall be binding upon the Commonwealth and the States parties thereto notwithstanding anything contained in this Constitution or the Constitution of the several States or in any law of the Parliament of the Commonwealth or of any State

"(6.) The powers conferred by this section shall not be construed as being limited in any way by the provisions of section one hundred and five of this Constitution.".

NOTES OF CASES—(a) For Notes of Cases on this section see *supra*, p. 94.

APPENDIX A.

THE FEDERAL COUNCIL OF AUSTRALASIA ACT 1885, AND THE LAWS PASSED BY THE FEDERAL COUNCIL AND IN FORCE AT 1st JULY, 1936.

THE FEDERAL COUNCIL OF AUSTRALASIA ACT, 1885.*

48 & 49 Vict., Ch. 60.

An Act to constitute a Federal Council of Australasia.

[14th August, 1885.]

WHEREAS it is expedient to constitute a Federal Council of Australasia, for the purpose of dealing with such matters of common Australasian interest, in respect to which united action is desirable, as can be dealt with without unduly interfering with the management of the internal affairs of the several colonies by their respective legislatures.

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows.

Definitions

1. In this Act, unless the context otherwise require, the following terms shall bear the meanings set opposite to them respectively:—

"Colonies."—The colonies (including their respective dependencies) of Fiji, New Zealand, New South Wales, Queensland, Tasmania, Victoria, and Western Australia, and the province of South Australia, and any other colonies that may hereafter be created in Australasia, or those of the said colonies in respect to which this Act is in operation:

"Crown Colony."—Any colony in which the control of public officers is retained by Her Majesty's Imperial Government

"Her Majesty's possessions in Australasia" The colonies and such other territories as Her Majesty may from time to time declare by Order in Council to be within the operation of this Act:

"Council."—The Federal Council as hereby constituted:

"Governor."—The Governor, Lieutenant Governor, or other officer administering the government of the colony referred to, with the advice of his executive council, except in the case of a Crown colony, in which case the word shall mean the Governor, Lieutenant Governor, or such other officer alone.

Institution of Federal Council.

2. There shall be in and for Her Majesty's possessions in Australasia a Federal Council, constituted as herein-after provided, and called the Federal Council of Australasia, which shall have the functions, powers, and authority herein-after defined.

Power to make laws.

3. Within such possessions Her Majesty shall have power, by and with the advice and consent of the Council, to make laws for the purposes herein-after specified, subject to the provisions herein contained respecting the operation of this Act.

* NOTE.—This Act was repealed by covering clause 7 of the Constitution, *supra*, p. 4.

Session of Council.

4. A session of the Council shall be held once at least in every two years.

Constitution of Council.

5. Each colony shall be represented in the Council by two members, except in the case of Crown colonies, which shall be represented by one member each. Her Majesty, at the request of the legislatures of the colonies, may by Order in Council from time to time increase the number of representatives for each colony.

Appointment, &c., of representatives.

6. The legislature of any colony may make such provision as it thinks fit for the appointment of the representatives of that colony, and for determining the tenure of their office.

Place of sitting of Council.

7. The first session of the Council shall be held at Hobart, in the colony of Tasmania. Subsequent sessions shall be held in such colony as the Council shall from time to time determine.

Summoning and prorogation of Council.

8. The Council shall be summoned and prorogued by the Governor of the colony in which the session shall be held, and shall be so summoned and prorogued by proclamation, published in the "Government Gazette" of each of the colonies, and shall meet at such time and at such place as shall be named in the proclamation.

Governors to report names of representatives.

9. The Governor of each colony shall from time to time transmit to the Governors of the other colonies the names of the members appointed to represent the colony of which he is Governor.

Vacancy in representation not to affect acts of Council.

10. Notwithstanding any vacancy in the representation of any colony, the Council shall be competent to proceed to the dispatch of business, and to exercise the authority hereby conferred upon it.

Special sessions of Council.

11. At the request of the Governors of any three of the colonies, a special session of the Council shall be summoned to deal with such special matters as may be mentioned in the proclamation convening it. Until the Council shall make other provision in that behalf, any such special session shall be summoned by the Governor of Tasmania, and shall be held at Hobart.

President of Council.

12. The Council shall in each session elect one of its members to be president.

Quorum, and voting.

13. The presence of a majority of the whole number of members of the Council for the time being, representing a majority of the colonies with respect to which this Act is in operation, shall be necessary to constitute a quorum for the dispatch of business, and all questions which shall arise in the Council shall be decided by the votes of a majority of the members present, including the president.

Oath or affirmation to be taken by members.

14. No member of the Council shall sit or vote until he shall have taken and subscribed before the governor of one of the colonies the oath of allegiance contained in the schedule hereto: Provided that every member authorized by the law of the colony which he represents to make an affirmation instead of taking an oath may make such affirmation instead of the oath hereby required to be taken.

Matters subject to legislative authority of Council.

15. Saving Her Majesty's prerogative, and subject to the provisions herein contained with respect to the operation of this Act, the Council shall have legislative authority in respect to the several matters following:—

(*a.*) The relations of Australasia with the islands of the Pacific:

(*b.*) Prevention of the influx of criminals:

(*c.*) Fisheries in Australasian waters beyond territorial limits:

(*d.*) The service of civil process of the courts of any colony within Her Majesty's possessions in Australasia out of the jurisdiction of the colony in which it is issued:

(*e.*) The enforcement of judgments of courts of law of any colony beyond the limits of the colony:

(*f.*) The enforcement of criminal process beyond the limits of the colony in which it is issued, and the extradition of offenders (including deserters of wives and children, and deserters from the imperial or colonial naval or military forces):

(*g.*) The custody of offenders on board ships belonging to Her Majesty's Colonial Governments beyond territorial limits:

(*h.*) Any matter which at the request of the legislatures of the colonies Her Majesty by Order in Council shall think fit to refer to the Council:

(*i*) Such of the following matters as may be referred to the Council by the legislatures of any two or more colonies, that is to say,—general defences, quarantine, patents of invention and discovery, copyright, bills of exchange and promissory notes, uniformity of weights and measures, recognition in other colonies of any marriage or divorce duly solemnized or decreed in any colony, naturalization of aliens, status of corporations and joint stock companies in other colonies than that in which they have been constituted, and any other matter of general Australasian interest with respect to which the legislatures of the several colonies can legislate within their own limits, and as to which it is deemed desirable that there should be a law of general application: provided that in such cases the Acts of the Council shall extend only to the colonies by whose legislatures the matter shall have been so referred to it, and such other colonies as may afterwards adopt the same.

Every Bill in respect of the matters marked (*a*), (*b*), or (*c*), shall, unless previously approved by Her Majesty through one of Her Principal Secretaries of State, be reserved for the signification of Her Majesty's pleasure.

Power to Governors to refer questions for determination of Council.

16. The Governors of any two or more of the colonies may, upon an address of the legislatures of such colonies, refer for the consideration and determination of the Council any questions relating to those colonies or their relations with one another, and the Council shall thereupon have authority to consider and determine by Act of Council the matters so referred to it.

Royal assent to Bills passed by Council

17. Every Bill passed by the Council shall be presented, for Her Majesty's assent, to the Governor of the colony in which the Council shall be sitting, who shall declare, according to his discretion, but subject to the provisions of this Act and to Her Majesty's instructions, either that he assents thereto in Her Majesty's name, or that he withholds such assent, or that he reserves the Bill for the signification of Her Majesty's pleasure, or that he will be prepared to assent thereto, subject to certain amendments to be specified by him

Power to Her Majesty to disallow Act to which Governor has assented in Her Majesty's name

18. When the Governor assents to a Bill in Her Majesty's name, he shall, by the first convenient opportunity, send an authentic copy of the Act to one of Her Majesty's Principal Secretaries of State, and if Her Majesty, within one year after receipt thereof by the Secretary of State, thinks fit to disallow the Act, such disallowance (with a certificate of the Secretary of State of the day on which the Act was received by him) being signified by such Governor by message to the Council, or by proclamation in the "Government Gazette" of all the colonies affected thereby, shall annul the Act from and after the day of such signification

Bill reserved for signification of Her Majesty's pleasure.

19. A Bill reserved for the signification of Her Majesty's pleasure shall not have any force unless and until within one year from the day on which it was presented to the Governor for Her Majesty's assent such Governor signifies, by message to the Council, or by proclamation published at last aforesaid, that it has received the assent of Her Majesty.

Acts of Council when assented to to have force of law

20. All Acts of the Council, on being assented to in manner herein-before provided, shall have the force of law in all Her Majesty's possessions in Australasia in respect to which this Act is in operation, or in the several colonies to which they shall extend, as the case may be, and on board all British ships, other than Her Majesty's ships of war, whose last port of clearance or port of destination is in any such possession or colony.

Publication of Acts.

21. Every Act assented to in the first instance shall be proclaimed in the "Government Gazette" of the colony in which the session of the Council at which it was passed was held, and shall also be transmitted by the Governor assenting thereto to the Governors of the several colonies affected thereby, and shall be proclaimed by them within the respective colonies of which they are Governors.

Acts of Council to supersede Colonial enactments.

22. If in any case the provisions of any Act of the Council shall be repugnant to, or inconsistent with, the law of any colony affected thereby, the former shall prevail, and the latter shall, so far as such repugnance or inconsistency extends, have no operation.

Standing orders for conduct of business.

23 The Council may from time to time make and adopt such standing rules and orders as may be necessary for the conduct of its business, and all such rules and orders shall be binding on the members of the Council.

Committees of Council.

24. The Council may appoint temporary or permanent committees of its members, to perform such duties, whether during the session of the Council or when the Council is not in session, as may be referred to them by the Council.

25. The Council may appoint such officers and servants as may be necessary for the proper conduct of its business, and may direct the payment to them of such remuneration as it may think fit. Officers and servants.

26. The necessary expenditure connected with the business of the Council shall be defrayed in the first instance by the colony wherein the expenditure is incurred, and shall be ultimately contributed and paid by the several colonies in proportion to their population. The amounts payable by the several colonies shall be assessed and apportioned, in case of difference, by the Governor of the colony of Tasmania. Mode of defraying expenditure of Council

27. It shall be the duty of the Governor of each colony to direct the payment by the Colonial Treasurer, or other proper officer of the colony, of the amount of the contribution payable by such colony under the provisions of the preceding section. Payment of contributions by colonies

28. Whenever it shall be necessary to prove the proceedings of the Council in any court of justice, or otherwise, a certified copy of such proceedings, under the hand of the clerk or other officer appointed in that behalf by the Council, shall be conclusive evidence of the proceedings appearing by such copy to have been had or taken Evidence of proceedings

29. The Council may make such representations or recommendations to Her Majesty as it may think fit with respect to any matters of general Australasian interest, or to the relations of Her Majesty's possessions in Australasia with the possessions of foreign powers Power to make representations to Her Majesty.

30. This Act shall not come into operation in respect of any colony until the legislature of such colony shall have passed an Act or Ordinance declaring that the same shall be in force therein, and appointing a day on and from which such operation shall take effect, nor until four colonies at the least shall have passed such Act or Ordinance. Commencement of Act in respect of any colony.

31. This Act shall cease to be in operation in respect to any colony the legislature of which shall have passed an Act or Ordinance declaring that the same shall cease to be in force therein *Provided nevertheless* that all Acts of the Council passed while this Act was in operation in such colony shall continue to be in force therein, unless altered or repealed by the Council. Power to determine operation of Act in any colony.

32. This Act shall be styled and may be cited as the Federal Council of Australasia Act, 1885 Short title.

THE SCHEDULE.

I, , do swear that I will be faithful and bear true allegiance to Her Majesty Queen Victoria and her successors in the Sovereignty of the United Kingdom of Great Britain and Ireland. So help me God

NOTE.—The name of the Sovereign of the United Kingdom of Great Britain and Ireland for the time being is to be substituted from time to time, with proper terms of reference thereto.

ACTS OF THE FEDERAL COUNCIL OF AUSTRALASIA.*

THE FEDERAL COUNCIL INTERPRETATION ACT 1886.

1886.

ANNO QUADRAGESIMO-NONO VICTORIÆ REGINÆ,

No. 1.

A D 1886

An Act for shortening the Language used in Acts of the Federal Council of Australasia.

[5 February, 1886.]

BE it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Federal Council of Australasia, assembled at Hobart, in the Colony of Tasmania, and by the authority of the same, as follows, (that is to say) :-

Short title.

1. This Act may for all purposes be cited as "*The Federal Council Interpretation Act* 1886."

Meanings of certain words.

2. In all Acts of the Federal Council of Australasia the following expressions shall have the meanings hereinafter respectively assigned to them (that is to say)

48 and 49 Vict. c. 60.

"*The Federal Council of Australasia Act* 1885" shall mean the Act passed by the Parliament of the United Kingdom of Great Britain and Ireland in the Forty-eighth and Forty-ninth years of Her Majesty's Reign, intituled "*An Act to constitute a Federal Council of Australasia*":

The Federation.

"The Federation" shall mean and include all Colonies in Australasia forming a portion of the British Empire, whether now existing or hereafter to be created, in respect of which "*The Federal Council of Australasia Act* 1885" is for the time being in operation :

Federal Council.

"Federal Council" shall mean the Federal Council of Australasia:

Australasian Colony.

"Australasian Colony" shall mean and include the Colonies (including their respective dependencies) of Fiji, New South Wales, New Zealand, Queensland, South Australia, Tasmania, Victoria, and Western Australia, and any British Colonies which may be hereafter created within Her Majesty's possessions in Australasia:

Acts of Federal Council.

"Act of the Federal Council" shall mean an enactment of the Federal Council duly assented to by or on behalf of Her Majesty :

*NOTE.—For list of Acts of the Federal Council which were in force at the establishment of the Commonwealth, but were not in force at the date of the preparation of this volume, and have consequently not been included in this volume, see short titles (in italics) in the Table at foot of page 4, *supra*.

A.D. 1886.

"Act of Parliament" used with respect to any Colony shall include any Act of Council and Ordinance of the Legislature of such Colony: Act of Parliament.

"*Government Gazette*" used with respect to any Colony shall mean the *Government Gazette*, *Royal Gazette*, or other official gazette (as the case may be) of such Colony: Government Gazette.

"Governor" shall mean the person for the time being administering the government of the Colony with respect to which the term is used: Governor.

"Governor in Council" shall mean the Governor acting with the advice of the Executive Council of the Colony with respect to which the term is used. Governor in Council.

"Her Majesty" shall mean and include Her Majesty, her heirs and successors: Her Majesty.

"Justice" shall mean a Justice of the Peace of the Colony with respect to which the term is used: Justice.

"Land" shall include land of any tenure and tenements and hereditaments corporeal or incorporeal, and houses and other buildings, also an undivided share in land: Land.

"Month" shall mean calendar month, unless words are added showing a lunar month to be intended: Month. 13 and 14 Vict. c. 21, s. 4

"Oath" and "affidavit" shall include affirmation or declaration in the case of persons by law allowed to affirm or declare instead of swearing, and the word "swear" and other words relating to an oath or swearing shall be construed accordingly: Oath, &c.

"Person" shall include corporation, unless there is something repugnant to or inconsistent with that interpretation: Person.

"Property" shall include real and personal property, and any estate or interest in any property real or personal, and any debt, and anything in action, and any other right or interest: Property.

"Supreme Court" shall mean the Court having unlimited jurisdiction in the Colony in question Supreme Court.

Words importing the masculine gender shall be deemed and taken to include females, and the singular to include the plural, and the plural the singular, unless the contrary as to gender or number is expressly provided. Masculine to include feminine, &c.

3. The time prescribed or allowed in any Act for the doing of a particular thing shall in all cases be taken to exclude the day of the act or event from or after which the time is to be reckoned, but shall include the day for the doing of that thing. Provided that where that day falls on a Sunday, or on a Christmas Day, or Good Friday the thing may be done on the day following. Reckoning of time.

Distance of space mentioned or indicated in an Act shall be computed according to the nearest road ordinarily used in travelling, unless measurement in a direct line is expressed, or that construction is rendered necessary by the context. Reckoning of distance.

4. When by any enactment a power is conferred on any officer or person by the word "may", or by the words "it shall be lawful," or by the words "it shall or may be lawful" applied to the exercise of that Where a power is discretionary and where not.

A D. 1886

power, such word or words shall be taken to import that the power may be exercised or not at discretion; but where the word "shall" is applied to the exercise of any such power, the construction shall be that the power conferred must be exercised.

Acts to be in sections. 13 and 14 Vict. c 21, s. 2.

5. All Acts of the Federal Council shall be divided into sections if there are more enactments than one, which sections shall be deemed to be substantive enactments without any introductory words.

Mode of citing Acts. 13 and 14 Vict. c. 21, s 3.

6. When in any Act of the Federal Council any Act of the Parliament of England, or of Great Britain, or of the United Kingdom of Great Britain and Ireland, or any Act of the Federal Council or Act of Parliament of any Australasian Colony is referred to, it shall be sufficient to name the Country, Federation, or Colony by whose Legislature such Act was passed, and to cite the year of the reign in which it was passed, and where there are more statutes or sessions than one in the same year the statute or the session (as the case may require), and where there are more chapters, numbers, or sections than one the chapter, number, or section, or chapter or number and section (as the case may require), without reciting the title of such Act, and the reference shall be made in the case of Acts passed by the respective Parliaments of England, Great Britain, and the United Kingdom of Great Britain and Ireland, according to the copies of statutes printed by the Queen's Printer in London, or by the Government Printer of any of the Australasian Colonies, and in the case of Acts of the Federal Council according to copies of such Acts printed by the Government Printer of any of the Colonies of the Federation, and in the case of Acts of the Parliament of any of the Australasian Colonies according to the copies of such Acts printed by the Government Printer of such Colony. Provided that where it is intended to amend or repeal any portion only of a section of an Act, it shall be necessary either to recite such portion or to set forth the matter or thing intended to be amended or repealed

Effect of repeal. 13 and 14 Vict. c 21, s. 5. *Ib*, s 6

7. When an Act repealing in the whole or in part any former Act is itself repealed, such last repeal shall not revive the Act or provisions before repealed unless words are added reviving such Act or provisions; and neither the repeal nor the expiration of an enactment shall affect any civil or criminal proceeding or any act, matter, or thing commenced to be done under the repealed or expiring Act, but the same may be continued under the repealed or expiring Act unless the provisions of the repealing Act otherwise indicate. And whenever an Act is made repealing in whole or in part any former Act and substituting some provision or provisions instead of the provision or provisions repealed, such provision or provisions so repealed shall remain in force until the substituted provision or provisions come into operation by force of the last made Act.

Reference in general terms to persons holding particular office to include successors.

8. Whenever any person holding or occupying a particular office or position is mentioned or referred to in general terms, such mention or reference shall be taken to include all persons who at any time thereafter occupy for the time being such office or position.

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Powers may be exercised from time to time.

9. Whenever power is given to do, perform, or submit to any act, matter, or thing, it shall be taken that such power may be exercised from time to time as occasion may require, unless the nature of the thing or the words used indicate a contrary intention.

Power to revoke and alter rules and regulations to be inferred from power to make them

10. In every enactment whereby power is given to any officers or persons to make any rules, orders, or regulations, it shall be taken that such officers or persons may revoke, alter, or vary the same from time to time as occasion may require, unless the terms used or the nature and objects of the power indicate that such power is intended to be exercised finally in the first instance.

Acts may be repealed in same session

11. This Act and every other Act to be passed by the Federal Council may be altered, amended, or repealed in the same session in which it has been made.

In the name and on behalf of Her Majesty the Queen, I assent to this Act.

GEO. C STRAHAN,
Governor.

FEDERAL COUNCIL OF AUSTRALASIA.

THE FEDERAL COUNCIL EVIDENCE ACT 1886

1886.

ANNO QUADRAGESIMO-NONO VICTORIÆ REGINÆ,

No. 2.

A.D. 1886

An Act to facilitate the Proof throughout the Federation of Acts of the Federal Council and of Acts of the Parliaments of the Australasian Colonies and of Judicial and Official Documents, and of the Signatures of certain Public Officers.

[5 February, 1886.]

BE it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Federal Council of Australasia, assembled at Hobart, in the Colony of Tasmania, and by the authority of the same, as follows (that is to say):—

Short title.

1. This Act may for all purposes be cited as "*The Federal Council Evidence Act* 1886."

Application of Act.

2. This Act relates to all cases in which it may be necessary for the purposes of any Act of the Federal Council to make proof of such things as are in this Act referred to.

Acts of Federal Council and Acts of Parliament of Australasian Colonies to be judicially noticed, and Government Printer's copies to be deemed *prima facie* correct for certain purposes.

3. For the purposes aforesaid all Courts and persons acting judicially within the Federation shall take judicial notice of—

All Acts of the Federal Council and all Acts of Parliament of any Australasian Colony:

The Colonies forming the Federation, and the extent of their territories.

And any paper purporting to be a copy of any Act of the Federal Council and purporting to be printed by the Government Printer of any Colony of the Federation, and any paper purporting to be a copy of any Act of Parliament of any Australasian Colony and purporting to be printed by the Government Printer of such Colony, shall *prima facie* be deemed to be a correct copy of the same respectively without any proof being given that such copy was so printed. The date which appears on any such copy purporting to be the day on which such Act received the Royal Assent, shall be received, for all purposes, as evidence of the date of such Assent.

Government Gazette to be evidence.

4. For the purposes aforesaid any paper purporting to be the *Government Gazette* of any Australasian Colony and purporting to be printed by the Government Printer thereof shall be evidence of the

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publication thereof on the day on which the same bears date; and any such paper, if it purports to contain any proclamation, order, regulation, rule, by-law, matter, or thing allowed, confirmed, cancelled, approved of, assented to, or certified shall also in such matters be *prima facie* evidence of the purport and due making of such proclamation, order, regulation, rule, by law, matter, or thing

Votes and Proceedings of Legislature of any Australasian Colony proved by copy
8 and 9 Vict c 113, s 3

5. For the purposes aforesaid all copies of the Votes and Proceedings of any House of the Legislature of any Australasian Colony and of Royal proclamations, if purporting to be printed by the Government Printer of the Colony to which they belong or relate, shall, on the mere production of the same be admitted as evidence thereof throughout the Federation by all Courts and persons acting judicially without any proof being given that such copies were so printed

Certain signatures to be judicially noticed
8 and 9 Vict. c 113, s 2

6 For the purposes aforesaid all Courts and persons acting judicially in any Colony within the Federation shall take judicial notice of the signature of every person who is now or hereafter, and of every person who has at any time been Governor, Judge of the Supreme Court, Prothonotary, Registrar, or Chief Clerk of the Supreme Court, Registrar-General, Judge or presiding Magistrate of any County Court or District or Local Court, or Court of Mines, Chairman of any Court of General or Quarter Sessions, Judge of any Court of Bankruptcy or Insolvency, or Police or Stipendiary Magistrate in any of the Australasian Colonies, and of the seal of every such Court, if such signature or seal is attached or appended to any decree, order, certificate, affidavit, or other judicial or official document

Powers under this Act not to be in derogation of existing law

7 The provisions of this Act as to proving documents shall be in addition to and not in derogation of any powers of proving documents existing at common law or given by any law now in force in any Colony of the Federation

In the name and on behalf of Her Majesty the Queen, I assent to this Act

GEO C STRAHAN,
Governor

FEDERAL COUNCIL OF AUSTRALASIA.

THE QUEENSLAND PEARL SHELL AND BECHE-DE-MER FISHERIES (EXTRA-TERRITORIAL) ACT OF 1888.

1888

ANNO QUINQUAGESIMO-PRIMO VICTORIÆ REGINÆ,

No. 1.

A D 1888

An Act to regulate the Pearl Shell and Beche-de-mer Fisheries in Australasian Waters adjacent to the Colony of Queensland.

[Reserved 20 January 1888, Queen's Assent proclaimed in Queensland 24 August 1888.]

Preamble

WHEREAS by certain Acts of the Parliament of the Colony of Queensland provision has been made for regulating the Pearl Shell and Beche de mer Fisheries in the territorial waters of that Colony And whereas by reason of the geographical position of many of the Islands forming portion of that Colony, vessels employed in such Fisheries are, in the prosecution of their business sometimes within and sometimes beyond the territorial jurisdiction of Queensland

AND WHEREAS it is expedient that the provisions of the said Acts should extend and apply to such vessels during all the time during which they are so employed, and that for that purpose the provisions of the said Acts so far as they are applicable to extra territorial waters, should be extended to such waters by an Act of the Federal Council of Australasia

Be it therefore enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Federal Council of Australasia assembled at Hobart in the Colony of Tasmania, and by the authority of the same, as follows

Short title and commencement

1 This Act may be cited as "The Queensland Pearl Shell and Beche de mer Fisheries (Extra territorial) Act of 1888," and shall commence and take effect on and from the date of Her Majesty's assent thereto being proclaimed in Queensland

Interpretation 45 Vict No 2 (Queensland), s 1

2 In this Act the following terms shall, unless the context otherwise indicates, have the meanings set against them respectively, that is to say—

"Australasian waters adjacent to Queensland"

"Australasian waters adjacent to Queensland" All Australasian waters within the limits described in the Schedule to this Act, exclusive of waters within the territorial jurisdiction of the Colony of Queensland,

A D 1888

"Ship"—Any vessel used in navigation or in Fishing, and not being a boat as defined by this Act — 'Ship'

"Boat"—Any vessel not exceeding two tons in burden which is usually hoisted to a ship's davits or carried on board of a ship, or attached to a ship, — Boat

"Master" or "Employer"—Any person other than a pilot who is for the time being in command or in charge of any ship or boat, or who is in charge of any Fishery as hereinafter defined — Master"

"Native Labourer"—Any aboriginal native of Australia or New Guinea, or of any of the islands adjacent thereto respectively — Native Labourer

"Polynesian"—Any native of Fiji or New Caledonia or of any of the Loyalty, New Hebrides Banks' or Solomon groups of Islands, or of any island in the Pacific Ocean not being in Her Majesty's Dominions, nor within the jurisdiction of any civilized power, — Polynesian'

"Pearl Shell and Beche de mer Fishery" or "The Fishery"—The business of diving for collecting, preparing storing or carrying to or from any place within the Colony of Queensland or its dependencies pearl oysters or pearl oyster shells or the sea slug commonly called beche de mer or any other fish or shell of the like kind which the Governor of Queensland in Council may hereafter by Proclamation published in the Queensland *Government Gazette* declare to be within the provisions of this Act — The Fishery

3 Every ship and boat shall be deemed to be engaged in the Pearl Shell and Beche de mer Fishery if she is used as a depot or place of lodging or refuge for persons employed in such Fishery or for storing provisions for the use of persons employed in such Fishery or if she is used by any person to dive from collect or take pearl oysters, pearl oyster shells or beche de mer or any other fish or shell which may be specified in any such Proclamation as aforesaid or for carrying or conveying otherwise than as a sea going vessel under a transire, pearl oysters, pearl oyster shells, or beche de mer, or any other fish or shell so specified, to or from any place within the Colony of Queensland or its dependencies — What ships or boats shall be deemed to be engaged in the fishery 53 Vict No 2, (Queensland), s 2

4 From and after the commencement of this Act it shall not be lawful to use or employ any ship or boat within Australasian waters adjacent to Queensland in the Pearl Shell and Beche de mer Fishery unless such ship or boat is duly licensed as required by the Act of the Parliament of the said Colony passed in the forty fifth year of Her Majesty's reign, and styled "The Pearl Shell and Beche de mer Fishery Act of 1881," as amended by an Act of the Parliament of the said Colony, passed in the fifteenth year of Her Majesty's reign, and styled "The Pearl Shell and Beche de mer Fishery Act Amendment Act of 1886," or any other Act in amendment of or substitution for those Acts — Ships or boats employed in the fishery to be licensed *Ib* s 3

5 If any ship or boat is employed in Australasian waters adjacent to Queensland in the Pearl Shell and Beche-de mer Fishery without being duly licensed as required by this Act, the owner and master of such — Penalty for using unlicensed ship or boat *Ib* s 6

ship or boat shall each be liable to a penalty not exceeding three times the amount of the license fee payable in respect of such ship or boat, which may be recovered in a summary way before any Police Magistrate or two Justices of the Colony of Queensland, at the suit of any Officer of Customs of the said Colony.

Forfeiture in default of payment.

In default of immediate payment of such penalty, the ship or boat, and all things found on board thereof, shall be seized and kept for a period of sixty days, and if at the expiration of that period the penalty is still unpaid, then the ship or boat, together with all her tackle, apparel, furniture, and cargo, shall be forfeited to Her Majesty.

Unlicensed ship or boat may be seized

45 Vict No 2, (Queensland), s. 7

6. It shall be lawful for any Police Magistrate or Officer of Customs or Police of the said Colony to seize and take any ship or boat which is found employed in the Fishery in Australasian waters adjacent to Queensland without being licensed as required by this Act, and to take any ship or boat so seized, or any ship or boat seized and taken under the provisions of the said recited Acts, to any port of Queensland, and to detain the same until a prosecution for breach of this Act or the said recited Acts is heard and determined.

License number to be painted on the bow in addition to the name.

Ib., s 8

7. Every ship or boat engaged in the Fishery in Australasian waters adjacent to Queensland shall keep her name, and the number of her license, prefixed by the letters No., painted in letters and figures of not less than three inches in length in the case of boats, and of not less than six inches in length in the case of ships, in white upon a black ground, or black upon a white ground, on each side of her bow above the water-line during the whole time her license remains in force.

If any ship or boat is found engaged in the Fishery in Australasian waters adjacent to Queensland without her name and the number of her license painted as herein prescribed, the master or owner thereof shall be liable to a penalty not exceeding Five Pounds.

Master refusing to produce license.

Ib., s. 9.

8. If the master of any licensed ship or boat refuses to produce the license of such ship or boat when required so to do by any Police Magistrate or Officer of Customs or Police of the said Colony, he shall for every such offence be liable to a penalty not exceeding Five Pounds.

Licenses of persons in charge of ships and divers. Penalty.

50 Vict. No. 2, (Queensland), s. 6.

9. Every person in charge of a ship engaged in the Fishery in Australasian waters adjacent to Queensland who is not required to hold a certificate of competency under the laws of that Colony, must hold a license permitting him to be so employed; and if any such person is found in charge of a ship so engaged without being so licensed, he shall be liable to a penalty not exceeding Ten Pounds.

Licenses to be shown to officers. Penalty.

Ib., s. 7.

10. Every such person in charge of a ship engaged in the Fishery in Australasian waters adjacent to Queensland who fails to show his license when called upon to do so by any Police Magistrate or Officer of Customs or Police of the said Colony, shall be liable to a penalty not exceeding Five Pounds.

11. It shall not be lawful for any master or other person to employ any seaman or other person in the Fishery in Australasian waters adjacent to Queensland, unless under a written agreement recorded in some Custom House or shipping office of the said Colony, or to discharge any such seaman or other person except in the presence of an Officer of Customs or Shipping Master of the said Colony

Seamen to be employed only under written agreement

If any master or other person in Australasian waters adjacent to Queensland employs any seaman or other person in the Fishery, or discharges any seaman or other person so employed, contrary to the provisions of this Act, or fails to produce the agreement when required so to do by a Police Magistrate or Officer of Customs or Police of the said Colony, he shall be liable to a penalty not exceeding Ten Pounds

Penalty 50 Vict No 2, (Queensland), s 5

12 No native labourer shall be employed or carried on board of any ship or boat engaged in the Fishery in Australasian waters adjacent to Queensland, unless he is carried on ship's articles in like manner as a seaman, and has been engaged to serve in accordance with the provisions of the Act of the Parliament of Queensland passed in the forty eighth year of Her Majesty's reign and styled 'The Native Labourers' Protection Act of 1884'

Native labourers not to be employed unless under articles 48 Vict No 20 (Queensland), s 2

13 If any ship or boat engaged in the Fishery carries in Australasian waters adjacent to Queensland any native labourer with respect to whom the provisions of the said last mentioned Act have not been observed, the master and owner shall be jointly and severally liable to a penalty not exceeding One hundred Pounds

Penalties *Ib* s 6

14 Every native labourer employed on board of, or in connexion with, a ship or boat engaged in the Fishery in Australasian waters adjacent to Queensland, whether he was engaged before or is engaged after the commencement of this Act, shall be discharged and receive his wages in the presence of a shipping master of the said Colony

Native labourers to be discharged and paid before shipping master *Ib*, s 7

If the master or owner of any such ship or boat, or any other person, in Australasian waters adjacent to Queensland, discharges a native labourer who has been employed on board of any such ship or boat, or pays his wages, otherwise than as is herein provided he shall be liable to a penalty not exceeding Twenty Pounds

Penalty

15 All deaths and desertions of Polynesians or native labourers employed in the Fishery which occur in Australasian waters adjacent to Queensland shall be forthwith reported by the master or employer of such Polynesians or native labourers to the principal Officer of Customs of the said Colony at the port nearest to the place where such deaths or desertions have occurred, and if any master or employer fails to make any such report as aforesaid, he shall be liable to a penalty not exceeding Ten Pounds nor less than Five Pounds

Deaths and desertions to be reported 45 Vict. No 2, (Queensland), s 14.

16. All offences against the provisions of this Act may be heard and determined by any Police Magistrate or two Justices of the Colony of Queensland, in accordance with the Laws of that Colony regulating

Jurisdiction of Justices. Compare 45 Vict No 2, (Queensland), s. 14.

summary proceedings before Justices, and any such Police Magistrate or Justices shall for that purpose have power to hear and determine the matter at any place within the said Colony where the offender may be, or where any ship or boat with respect to which or in connexion with which the offence was committed is found, or at any place in the said Colony appointed for holding Courts of Petty Sessions, and to make such orders for the safe keeping, detention, seizure, forfeiture, or sale of any such ship or boat, and all things found therein, as such Police Magistrate or Justices may think fit.

Appeal. 45 Vict. No. 2, (Queensland), s. 15.

17 If any person thinks himself aggrieved by any determination or adjudication of any Police Magistrate or Justices with respect to any penalty or forfeiture under the provisions of this Act, he may appeal to the Supreme Court of Queensland or to a District Court of the said Colony in accordance with the Laws of that Colony regulating appeals from Justices

Onus of proof. 48 Vict. No. 20, (Queensland), s 11.

18. In any proceeding under this Act, the averment in the information that any person named therein is a Polynesian or a native labourer shall be sufficient proof of the fact until the contrary is shown.

Limitation of Act.

19. This Act applies only to British ships, and boats attached to British ships

THE SCHEDULE

Letters Patent, 10th October, 1878. 42 Vict. No 1, (Queensland).

All waters included within a line drawn from Sandy Cape northward to the south eastern limit of the Great Barrier Reefs, thence following the line of the Great Barrier Reefs to their north eastern extremity near the latitude of nine and a half degrees south, thence in a north westerly direction, embracing East Anchor and Bramble Cays, thence from Bramble Cays in a line west by south (south seventy nine degrees west) true, embracing Warrior Reef, Saibai and Tuan Islands, thence diverging in a north-westerly direction so as to embrace the group known as the Talbot Islands, thence to and embracing the Deliverance Islands, and onwards in a west by south direction (true) to the meridian of one hundred and thirty-eight degrees of east longitude, and thence by that meridian southerly to the shore of Queensland

In accordance with Act 48 and 49 Vict., Cap. 60, Section 15, I reserve this Bill for the signification of Her Majesty's pleasure.

R. G. C. HAMILTON,
Governor.

FEDERAL COUNCIL OF AUSTRALASIA.

THE WESTERN AUSTRALIAN PEARL SHELL AND BECHE-DE-MER FISHERIES (EXTRA-TERRITORIAL) ACT OF 1889.

1889.

ANNO QUINQUAGESIMO-SECUNDO VICTORIÆ REGINÆ,

No. 1.

An Act to regulate the Pearl Shell and Beche-de-mer Fisheries in Australasian Waters adjacent to the Colony of Western Australia. AD. 1889.

[Reserved, 4 February, 1889; Queen's Assent proclaimed in Tasmania, 18th January, 1890.]

WHEREAS by certain Acts of the Legislative Council of Western Australia provision has been made for regulating the Pearl Shell Fishery in the territorial waters of that Colony: And whereas vessels employed in such Fishery are, in the prosecution of their business, sometimes within and sometimes beyond the territorial jurisdiction of Western Australia: And whereas it is expedient that the provisions of the said Acts should extend and apply to such vessels during all the time during which they are so employed, and that for that purpose the provisions of the said Acts, so far as they are applicable to extra-territorial waters, should be extended to such waters by an Act of the Federal Council of Australasia: And whereas it is desirable that the provisions of the said Acts should apply to persons and vessels engaged in the Beche-de-mer Fishery in like manner as to the Pearl Shell Fishery: Preamble

Be it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Federal Council of Australasia, assembled at Hobart, in the Colony of Tasmania, and by the authority of the same, as follows:—

1. This Act may be cited as "The Western Australian Pearl Shell and Beche-de-mer Fisheries (Extra-Territorial) Act of 1889," and shall take effect on and from the date of Her Majesty's assent thereto being proclaimed in Western Australia.* Short title and commencement.

2. This Act applies only to British ships, and boats attached to British ships. Limitation of Act.

* NOTE.—Her Majesty's assent to this Act was proclaimed in Western Australia by Proclamation dated 12th February, 1890, and published in the *Gazette* on 20th February, 1890 (see *Gazette*, No 9, 20th February, 1890, pp 139–140

A.D. 1889.

Interpretation.

3. In this Act the following terms shall, unless the context otherwise indicates, have the meanings set against them respectively; that is to say-

"Australasian Waters."

"Australasian Waters adjacent to Western Australia"—All Australasian waters within the limits described in the Schedule to this Act, exclusive of waters within the territorial jurisdiction of the Colony of Western Australia:

"Ship"

"Ship"—Any and every sort of vessel or craft of any sort or size, and whether propelled by oars only or not, and whether having a fixed mast or not, other than boats as defined by this Act:

"Boat"

"Boat"—Any vessel not exceeding two tons in burthen which is usually hoisted to a ship's davits, or carried on board of a ship, or attached to a ship:

"Master"

"Master" Any person other than a pilot who is for the time being in command or in charge of any ship or boat, or who is in charge of any fishery as hereinafter defined.

"Transire"

"Transire" A warrant from the Customs to let goods pass:

"Licensing Officer."

"Licensing Officer" Any person appointed by the Governor of Western Australia to be a Licensing Officer.

"Labourer"

"Labourer" -Any person coming within the definition of a labourer within the meaning of the Act passed by the Legislative Council of Western Australia, and called and known as "The Imported Labor Registry Act, 1884."

"The Fishery."

"Pearl Shell and Beche-de-mer Fishery" or "the Fishery"—The business of diving for, collecting, preparing, storing, or carrying to or from any place within the Colony of Western Australia or its dependencies, pearl oysters or pearl oyster shells, or the sea slug commonly called beche-de-mer, or any other fish or shell of the like kind which the Governor of Western Australia in Council may hereafter, by Proclamation in the *Government Gazette* of Western Australia, declare to be within the provisions of this Act:

Pearl Shell Fishery Acts.

"The Pearl Shell Fishery Acts" shall mean and include the following Acts passed by the Legislative Council of the Colony of Western Australia, namely:

The Pearl Shell Fishery Regulation Act, 1873.
The Pearl Shell Fishery Regulation Act, 1875.
The Pearl Shell Fishery Regulation Act, 1883.
The Pearl Shell Fishery Act, 1886.
The Aborigines Protection Act, 1886, Sections Twenty-nine and Thirty.
The Pearl Shell Fishery Regulation Acts Amendment Act, 1887.

and also any Acts amending any of the same.

Whenever in this Act the expression "The Pearl Shell Fishery Acts" is used, it shall be deemed to be used in respect of any provision or provisions in any one or more of the Pearl Shell Fishery Acts contained, applicable to the matter in respect of which it is used.

And all the provisions of the said Acts shall within Australasian waters adjacent to Western Australia also extend and apply, so far as is possible, to the Fishery for the sea-slug, commonly called Beche-de-mer, or any other fish or shell which the Governor of Western Australia may hereafter, by Proclamation published in the *Government Gazette* of Western Australia, declare to be within the provisions of this Act

What ships or boats shall be deemed to be employed in the Fishery.

4. Every ship and boat shall be deemed to be engaged in the Fishery, if she is used as a depot or place of lodging or refuge for persons employed in the Fishery, or for storing provisions for the use of persons employed in the Fishery, or if she is used by any person to dive from, collect, or store pearl oysters, pearl oyster-shells, or beche-de-mer, or any other fish or shell which may be specified in any such Proclamation as aforesaid, or for carrying or conveying, otherwise than as a sea-going vessel under a transire, pearl oysters, pearl oyster shells, or beche-de-mer, or any other fish or shell so specified, to or from any place within the Colony of Western Australia and its dependencies

Ships or boats employed in the Fishery to be licensed

5. From and after the commencement of this Act it shall not be lawful to use or employ any ship or boat within Australasian waters adjacent to Western Australia in the Fishery, unless such ship or boat is duly licensed as required by the Pearl Shell Fishery Acts. The owner, master, or other person in charge of any ship or boat who within Australasian waters adjacent to Western Australia does or omits to do any act which, if it were done or omitted to be done within territorial waters would be an offence against the provisions of the said Acts, as hereinbefore extended, shall be liable to the like penalties as are imposed by the said Acts in respect of the same act or omission when done or made within territorial waters and such ship or boat may be dealt with in the same manner as if such offence had been committed within territorial waters Provided always, that any ship or boat licensed under the provisions of the Act of the Legislative Council of the said Colony, passed in the fiftieth year of Her Majesty's reign, and styled "The Sharks Bay Pearl Shell Fishery Act, 1886," or any Act amending the same, shall, while employed within the limits defined by the said Act, be deemed to be duly licensed for the purposes of this Act.

Unlicensed ship or boat may be seized.

6. It shall be lawful for any Police Magistrate or Officer of Customs or Police of the said Colony to seize and take any ship or boat which is found employed in the Fishery in Australasian waters adjacent to Western Australia without being licensed as required by this Act, and to take any ship or boat so seized, or any ship or boat seized and taken under the provisions of the Pearl Shell Fishery Acts, to any port of Western Australia, and to detain the same until a prosecution for breach of this Act or of the Pearl Shell Fishery Acts is heard and determined.

Licensed ship to bear certain characteristic figures.

7. Every licensed ship engaged in the Fishery in Australasian waters adjacent to Western Australia shall have painted thereon the figures determined on by the Licensing Officer as being the characteristic figures of such ship, and also the initial letter of the port where the licence is

A.D. 1889

obtained, in the manner prescribed by the Pearl Shell Fishery Acts, and the master, owner, or other person before using or employing such ship in the Fishery shall paint such figures and such initial letter on the said ship in the manner prescribed by the said Acts, and shall, so long as the said ship continues to be used or employed in the Fishery, maintain such figures and letter in a clear and legible manner, and in default of so doing shall be liable to the like penalties as are imposed by the said Acts for a like default committed within territorial waters.

Master refusing to produce licence

8. If the master of any licensed ship or boat refuses to produce the licence of such ship or boat when required so to do by any Police Magistrate or Officer of Customs or Police of the said Colony, he shall for every such offence be liable to a penalty not exceeding Five Pounds.

Licences of persons in charge of ships

9. Every person in charge of a ship engaged in the Fishery in Australasian waters adjacent to Western Australia who is not required to hold a certificate of competency under the laws of that Colony, must hold a licence permitting him to be so employed, and if any such person is found in charge of a ship so engaged without being so licensed, he shall be liable to a penalty not exceeding Ten Pounds

Licences to be shown to officers

10 Every such person in charge of a ship engaged in the Fishery in Australasian waters adjacent to Western Australia who fails to show his licence when called upon to do so by any Police Magistrate or Officer of Customs or Police of the said Colony, shall be liable to a penalty not exceeding Five Pounds

Seamen, &c to be employed only under a written agreement

11. It shall not be lawful for any master or other person to employ any seaman or other person in the Fishery in Australasian waters adjacent to Western Australia, unless under a written agreement recorded in some Custom House of the said Colony, or to discharge any such seaman or other person, except in the presence of an Officer of Customs of the said Colony

If any master or other person in Australasian waters adjacent to Western Australia employs any seaman or other person in the Fishery, or discharges any seaman or other person so employed, contrary to the provisions of this Act, or fails to produce such written agreement when required so to do by a Police Magistrate or Officer of Customs or Police of the said Colony, he shall be liable to a penalty not exceeding Ten Pounds

Jurisdiction of Justices

12. All offences against the provisions of this Act may be heard and determined by any Police Magistrate or two Justices of the Colony of Western Australia, in accordance with the laws of that Colony regulating summary proceedings before Justices, and any such Police Magistrate or Justices shall for that purpose have power to hear and determine the matter at any place within the said Colony where the offender may be, or where any ship or boat with respect to which or in connexion with which the offence was committed is found, or at any place in the said Colony appointed for holding Courts of Petty Sessions, and to make

such orders for the safe keeping, detention, seizure, forfeiture, or sale of any such ship or boat, and all things found therein, as such Police Magistrate or Justices may think fit

13 If any person think himself aggrieved by any determination or adjudication of any Police Magistrate or Justices with respect to any penalty or forfeiture under the provisions of this Act, he may appeal to the Supreme Court of Western Australia or to a Court of Quarter Sessions, in accordance with the laws of that Colony regulating appeals from Justices

Appeal

14 All the provisions in respect of imported labour contained in an Act passed by the Legislative Council of Western Australia in the forty-eighth year of Her Majesty's reign, called and known as "The Imported Labor Registry Act, 1884," shall apply as nearly as possible to the case of laborers employed in the Fishery within Australasian waters adjacent to Western Australia

Imported labour

15. All the provisions of the Pearl Shell Fishery Acts not specially referred to by this Act, and which can be rendered applicable to the Fishery in extra-territorial waters, are hereby rendered applicable thereto

Provisions of Pearl Shell Fisheries Acts to apply

SCHEDULE

A parallelogram of which the North-Western corner is in longitude 112° 52′ East, and latitude 13° 30′ South, of which the North Eastern corner is in longitude 129° East, and latitude 13° 30 South of which the South Western corner is in longitude 112° 52′ East, and latitude 35° 8′ South, and of which the South Eastern corner is in longitude 129° East, and latitude 35° 8′ South

In accordance with Act 18 & 49 Vict , Cap. 60, Section 15, I reserve this Bill for the signification of Her Majesty's pleasure

R G C HAMILTON,
Governor

FEDERAL COUNCIL OF AUSTRALASIA.

THE AUSTRALASIAN ORDERS IN LUNACY ACT, 1891.

1891

ANNO QUINQUAGESIMO QUARTO VICTORIÆ REGINÆ,

No. 1.

A D 1891

An Act to facilitate the Recognition in other Colonies of Orders and Declarations of the Supreme Court of any Colony in matters of Lunacy.

[23 January, 1891.]

Preamble
48 & 49 Vict ch 60

WHEREAS the Legislatures of the Colonies of Victoria, Queensland, Tasmania, and Western Australia have, pursuant to the provisions of an Act of the Imperial Parliament, intituled "An Act to constitute a Federal Council of Australasia" referred to the Federal Council the matter relating to the recognition in other Colonies of Orders and Declarations of the Supreme Court of any Colony in matters of Lunacy for the exercise of Legislative authority thereon

BE it therefore enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Federal Council of Australasia, assembled at Hobart, in the Colony of Tasmania, and by the authority of the same, as follows.

Short title

1. This Act may be cited as "The Australasian Orders in Lunacy Act, 1891"

Interpretation

2. In this Act –

"Registrar" shall mean and include the Prothonotary, Chief Clerk, Registrar, or other Officer having authority to affix the Seal of the Supreme Court of any Colony

Order or Declarations in Lunacy to have like effect in other Colonies on being sealed

3 When any Order or Declaration made by the Supreme Court of any Colony in the exercise of its jurisdiction in Lunacy shall be produced to and a copy thereof deposited with the Registrar of the Supreme Court of any other Colony, such Order or Declaration shall be sealed with the Seal of the last-mentioned Court and shall have the like force and effect and have the same operation in such other Colony, and every Master, Guardian, Committee, and Receiver acting thereunder shall perform the same duties and be subject to the same liabilities in such other Colony as if such Order or Declaration had been originally made by such last-mentioned Court.

Provided, that a Guardian, Committee, or Receiver appointed under any such Order shall not have or exercise any power or authority in any Colony other than that in which the Order or Declaration was made, until his appointment has been confirmed by the Supreme Court of the Colony in which the power or authority is proposed to be exercised, or a Judge thereof, which confirmation may be granted upon such terms as to the Court or Judge may seem fit, or may be refused.

Order not to be sealed until fees are paid

4. No such Order or Declaration shall be sealed as aforesaid until all such stamp duty and other fees, if any, have been paid, and such Certificate of payment, if any, has been produced as would have been payable or required respectively if such Order or Declaration had been originally made by the Supreme Court the Seal whereof is sought to be affixed.

In the name and on behalf of Her Majesty the Queen, I assent to this Act

R. G C HAMILTON,
Governor.

APPENDIX B.

ACTS PASSED BY THE PARLIAMENTS OF THE STATES, REFERRING MATTERS TO THE PARLIAMENT OF THE COMMONWEALTH IN PURSUANCE OF SECTION 51 (xxxvii) OF THE CONSTITUTION.

F.4026.—9

LIST OF ACTS PASSED BY THE PARLIAMENTS OF THE STATES REFERRING MATTERS TO THE PARLIAMENT OF THE COMMONWEALTH IN PURSUANCE OF SECTION 51 (xxxvii) OF THE CONSTITUTION.

NOTE.—Short titles of Acts not in force at the date of the preparation of this volume are printed in italics in this Table. For information as to the operation of these Acts and, in the case of those in force, their respective dates of commencement, see note at end of each Act.

Title of Act	No. and Year of State Act	Page in this Volume
NEW SOUTH WALES		
Commonwealth Powers (War) Act 1915	No. 65, 1915	147
VICTORIA		
Commonwealth Powers (Air Navigation) Act 1920	No. 3108, 1920	150
Commonwealth Arrangements Act 1928 (Part III.)	No. 3658, 1928	151
Debt Conversion Agreement Act 1931 (No. 2) s. 5	No. 4009, 1931	153
QUEENSLAND		
The Commonwealth Powers (Air Navigation) Act of 1921	12 George V., No. 30	156
The Commonwealth Legislative Power Act 1931	22 George V., No. 30	157
SOUTH AUSTRALIA		
Commonwealth Powers (Air Navigation) Act 1921	No. 1469, 1921	159
Commonwealth Legislative Power Act 1931	No. 2061, 1931	160
WESTERN AUSTRALIA		
Nil		
TASMANIA		
Commonwealth Powers (Air Navigation) Act 1920	11 George V., No. 42	162

NEW SOUTH WALES.

Act No. 65, 1915.

COMMONWEALTH POWERS (WAR) ACT 1915.

An Act to refer certain matters to the Parliament of the Commonwealth for the duration of the present war, and for a period of twelve months after the conclusion of peace. George V, No 65

[Assented to 21st December 1915.]

Preamble. WHEREAS it is enacted by the Constitution of the Commonwealth of Australia that the Parliament of the Commonwealth shall, subject to the Constitution, have power to make laws for the peace, order, and good government of the Commonwealth with respect to matters referred to the Parliament of the Commonwealth by the Parliament or Parliaments of any State or States, but so that the law shall extend only to States by whose Parliaments the matter is referred, or which afterwards adopt the law

AND WHEREAS certain proposed laws for the alteration of the Constitution of the Commonwealth have been passed by an absolute majority of each House of the Parliament of the Commonwealth, and writs have been issued by the Governor General for the submission of those proposed laws to the electors of the Commonwealth

AND WHEREAS as a result of discussion which arose at a financial conference of the Premiers of the States, held in Melbourne in the month of November in the year one thousand nine hundred and fifteen, it was agreed* between the said Premiers and the Prime Minister of the Commonwealth that the Premiers would bring forward in their respective Parliaments legislation for referring to the Parliament of the Commonwealth the matters specified in this Act, and that the Government of the Commonwealth would postpone during the currency of the war the taking of the vote of the electors of the Commonwealth upon the said proposed laws for the alteration of the Constitution

BE it therefore enacted by the King's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows

Citation 1. This Act may be cited as the "Commonwealth Powers (War) Act 1915"

Commencement. 2 This Act shall commence on a day to be proclaimed by the Governor.†

* For details of the offer which was made by the Premiers to the Prime Minister on the occasion in question, see Note B, *infra*, p 149

† NOTE.—See Note A *infra*, p 149

Reference of certain matters to the Commonwealth Parliament.

3. Subject to the limitations and conditions in this Act contained, the following matters are hereby referred to the Parliament of the Commonwealth, that is to say:—

(i) Trade and commerce.

(ii) Corporations, including—

(a) the creation, dissolution, regulation, and control of corporations:

(b) corporations formed under the law of a State, including their dissolution, regulation, and control; but not including municipal or governmental corporations, or any corporation formed solely for religious, charitable, scientific, or artistic purposes, and not for the acquisition of gain by the corporation or its members, and

(c) foreign corporations, including their regulation and control.

(iii) The following matters:—

(a) Employment and unemployment.

(b) Strikes and lock-outs.

(c) The maintenance of industrial peace.

(d) The settlement of industrial disputes.

(iv) Conciliation and arbitration for the prevention and settlement of industrial disputes in relation to employment in the railway service of a State

(v) Trusts, combinations, monopolies, and arrangements in relation to—

(a) the production, manufacture, or supply of goods, or the supply of services, or

(b) the ownership of the means of production, manufacture, or supply of goods, or supply of services.

(vi) The carrying on, by or under the control of the Commonwealth, of any industry or business of producing, manufacturing, or supplying any specified goods, or of supplying any specified services, which industry or business each House of the Parliament of the Commonwealth, in the same session, has by resolution passed by an absolute majority of its members declared to be the subject of a monopoly; and the acquisition for that purpose on just terms of any property used in connexion with the industry or business:

Provided that this paragraph shall not apply to any industry or business conducted or carried on by the Government of a State or any public authority constituted under a State.

Exemption of State railways.

4. Nothing in this Act contained shall be construed to empower the Parliament of the Commonwealth or any authority constituted under the Commonwealth to affect the control or management of railways the property of a State, or the rates or fares on such railways.

Duration of Act and reference.

5. This Act, and the reference made by this Act, shall continue in force for the duration of the present war between His Majesty and the

German Empire, and for a period of twelve months after the declaration of peace, and no longer; and are subject to the limitation that no law made by the Commonwealth by virtue of the powers contained in this Act shall continue to have any force or effect, by virtue of this Act or the reference made by this Act, after the expiration of that period.

NOTE A.—This Act was not proclaimed to commence. By virtue of s. 5 of the Act it expired on 9th January, 1921, (the date declared in pursuance of s. 5 of the Commonwealth *Termination of the Recent War (Definition) Act* 1919 to be the date of the termination of the War between His Majesty the King and Germany being 10th January 1920. See *Commonwealth Gazette* 8th March 1920, p. 381.)

NOTE B. Following discussion at a Financial Conference of Premiers held in Melbourne in November 1915 the following offer was made to the Prime Minister by the Premiers of New South Wales, Victoria, Queensland and South Australia, who were present at that Conference:

"Following upon the discussion which arose at the Financial Conference of the Premiers on the occasion of the visit of the Prime Minister this Conference of Premiers suggests that, in order to avoid the necessity of taking up Part of the short session in December, the Commonwealth authorities concur in the proposal to postpone the referendum during the currency of the war on the following conditions:

1. The Premiers to bring forward in their respective State Parliaments legislation to provide for the reference during the war and for a period not exceeding five years after the declaration of peace by the Commonwealth Parliament under section 51 (xxxvii.) of the Constitution of the powers sought by the proposed alterations of the Constitution subject to the following limitations:
   - (*a*) Railways the property of a State to be exempt from the Commonwealth power so far as regards the control or management of such railways and rates and fares on such railways.
   - (*b*) In lieu of proposal No. 3 (Industrial matters) * substitute the following:—
     - (*c*) Unemployment and unemployment.
     - (*d*) Strikes and lock-outs.
     - (*e*) The maintenance of industrial peace.
     - (*f*) The settlement of industrial disputes.
2. The Premiers at a Conference to consider what powers they will invite their respective Parliaments to submit permanently under section 51 (xxxv.) (*sic Quære* (xxxvii.)) of the Constitution.

"3. With a view to removing any doubt as to such power of the State Parliaments under section 51 (xxxvii.) to refer any matter for a limited time only, an Act of the Imperial Parliament to be sought (if thought necessary) to make that power clear, and to apply to any matter that has been referred."

(* NOTE.—The proposal No. 3 (Industrial Matters), above referred to, is the proposal contained in the Bill entitled "Constitution Alteration (Industrial Matters) 1915," printed as Bill No. 3 in Appendix D to this volume, *infra* p. 243.)

It was stated by the Prime Minister when announcing in Parliament the acceptance of this offer that the Premier of Western Australia had telegraphed his approval of the offer subject to the position in which he then found himself in consequence of a motion of want of confidence. The Premier of Tasmania had also approved of the offer subject to his not being fully committed to submitting the proposals before the end of the year and possibly during the present session (see Hansard No. 79, pp. 6–7).

Bills to give effect to the preceding agreement were introduced into all the State Parliaments before the end of 1915 with the following results:

New South Wales. Bill passed without alteration.

Victoria. Commonwealth Powers (War) Bill introduced into Legislative Assembly on 17th November 1915. Second reading moved on 2nd December and agreed to by 47 votes to 22. But still second reading has not been carried by an absolute majority of votes (the Speaker (the Hon. Sir Frank Madden) ruled that a second reading had not been carried in accordance with the requirements of the *Constitution Act* of the State of Victoria). A Motion to dissent with the ruling of the Speaker was moved on 3rd December 1915, but was negatived by 23 votes to 1. The Bill therefore lapsed.

Queensland. Commonwealth Powers (War) Bill introduced into the Legislative Assembly and passed through all stages in that House on 11th November 1915.

Bill introduced into the Legislative Council on 16th November 1915 and read a first time. Motion that Bill be now read a second time moved on same day but negatived by 19 votes to 5. Motion to same effect moved on 25th January 1916, but on motion by House to read "that the Bill be read a second time this day six months" and as amended agreed to on 25th January 1916. This resolution thus disposed of the Bill.

South Australia. Commonwealth Powers (War) Bill introduced into the House of Assembly on 10th November 1915. Second reading moved on 16th November 1915 and agreed to on 18th November, 1915. Third reading moved and agreed to on 2nd December 1915.

Bill introduced into the Legislative Council on 2nd December 1915. Second reading moved on 3rd December 1915 and negatived by 12 votes to 7 on 16th December 1915.

Western Australia. Commonwealth Powers (War) Bill introduced into the Legislative Assembly on 2nd November 1915. Second reading moved in the same day and debated on 24th November 1915. Bill not further proceeded with.

Tasmania. Transfer of Powers to Commonwealth Bill introduced into House of Assembly on 10th November 1915. Second reading not moved.

At the Premiers' Conference held in Adelaide in May 1916 the Conference reaffirmed the desirableness of giving effect to the agreement above referred to (the Premiers of Victoria and Tasmania dissenting). Thereafter the following further action was taken in the undermentioned States:

Queensland. Bill re-introduced into the Legislative Assembly on 7th September 1916. Second reading moved and agreed to on 12th September 1916. Third reading moved and agreed to on 14th September 1916.

Bill introduced into the Legislative Council on 14th September 1916. Second reading moved on 26th September 1916. Motion that debate be adjourned until "to-morrow" amended by omitting "to-morrow" and substituting "this day fortnight". Second reading further discussed on 31st October 1916. Amendments to second reading that Bill be read a second time this day six months for certain reasons stated in the Amendment—moved and carried on 1st November 1916. This amendment finally disposed of the Bill.

South Australia. Bill re-introduced into the House of Assembly on 28th July, 1916. Second reading not moved.

VICTORIA.

Act No. 3108.

COMMONWEALTH POWERS (AIR NAVIGATION) ACT 1920.

An Act to refer to the Parliament of the Commonwealth certain matters in connexion with Air Navigation.

[24th December, 1920.]

Preamble

WHEREAS it is enacted by the Constitution of the Commonwealth of Australia that the Parliament of the Commonwealth shall subject to the Constitution have power to make laws for the peace order and good government of the Commonwealth with respect to matters referred to the Parliament of the Commonwealth by the Parliament or Parliaments of any State or States but so that the law shall extend only to States by whose Parliaments the matter is referred or which afterwards adopt the law:

AND WHEREAS a Convention (in this Act referred to as "the Convention") for determining by a common agreement certain uniform rules with respect to international air navigation was signed on behalf of His Majesty in Paris on the thirteenth day of October, One thousand nine hundred and nineteen:

AND WHEREAS it is expedient that provision should be made by the Parliament of the Commonwealth of Australia for any matter necessary or proper for performing the obligations of the Commonwealth towards the other contracting parties arising under the Convention (including every Annex thereto) or arising under any modification or amendment of the Convention which may be made under Article thirty-four thereof and for intercourse by aerial navigation between the State of Victoria and any country or any State of the Commonwealth:

AND WHEREAS at a conference of the Premiers of the States held in May, One thousand nine hundred and twenty it was resolved that it was desirable that each of the Parliaments of the States should refer to the Parliament of the Commonwealth the matter of the control of air navigation subject to the retention by each of the States of certain rights and powers specified in the resolution:

AND WHEREAS in order to facilitate the carrying out of the objects of the said resolution it is expedient to provide that the matters hereinafter specified should be referred to the Parliament of the Commonwealth:

BE it therefore enacted by the King's Most Excellent Majesty by and with the advice and consent of the Legislative Council and the Legislative

Assembly of Victoria in this present Parliament assembled and by the authority of the same as follows (that is to say) —

Short title. **1.** This Act may be cited as the *Commonwealth Powers (Air Navigation)* Act 1920

Commencement. **2** This Act shall come into operation on a day to be proclaimed by the Governor in Council by proclamation published in the *Government Gazette* *

Matters referred to the Parliament of the Commonwealth. **3** The following matters are hereby referred to the Parliament of the Commonwealth (that is to say)

(1) Any matter necessary or proper for performing the obligations of the Commonwealth towards the other contracting parties arising under the International Convention for the regulation of Aerial Navigation signed at Paris on the thirteenth day of October One thousand nine hundred and nineteen (including every Annex thereto) or arising under any modification or amendment of the Convention which may be made under Article thirty-four thereof, and

(2) Intercourse by aerial navigation between the State of Victoria and any other country or any State of the Commonwealth

* NOTE This Act was duly proclaimed to come into operation. It was repealed by the *Commonwealth Arrangements Act* 1928 (No. 3658) which re-enacted provisions identical with those contained in s. 3 of this Act. For copy of relevant provisions of *Commonwealth Arrangements Act* 1928 see *infra* pp. 151 *et seq.*

Act No. 3658.

COMMONWEALTH ARRANGEMENTS ACT 1928

An Act to consolidate the Law providing for certain matters in Victoria in connexion with the Commonwealth.

[12th February, 1929]

BE it enacted by the King's Most Excellent Majesty by and with the advice and consent of the Legislative Council and the Legislative Assembly of Victoria in this present Parliament assembled and by the authority of the same as follows (that is to say) —

Short title division and commencement of Parts I. and II **1.** This Act may be cited as the *Commonwealth Arrangements Act* 1928, and is divided into Parts as follows —

Part I.—General ss. 3–6,
Part II.—Taxation of Salaries of State Officers ss. 7–9,
Part III.—Air Navigation ss. 10 and 11,

and as to Parts I. and II. shall come into operation on a day to be fixed by proclamation of the Governor in Council published in the *Government Gazette*.

Repeal Schedule.

2. The Acts mentioned in the Schedule to this Act to the extent thereby expressed to be repealed are hereby repealed. Such repeal shall not affect any right acquired or any liability incurred or any matter or thing done under the said repealed Acts or any of them.

* * * * * * * *

Preamble.

PART III.—AIR NAVIGATION.

Commonwealth Powers (Air Navigation) Act 1920.

10. WHEREAS it is enacted by the Constitution of the Commonwealth of Australia that the Parliament of the Commonwealth shall subject to the Constitution have power to make laws for the peace order and good government of the Commonwealth with respect to matters referred to the Parliament of the Commonwealth by the Parliament or Parliaments of any State or States but so that the law shall extend only to States by whose Parliaments the matter is referred or which afterwards adopt the law:

AND WHEREAS a Convention (in this Act referred to as "the Convention") for determining by a common agreement certain uniform rules with respect to international air navigation was signed on behalf of His Majesty in Paris on the thirteenth day of October One thousand nine hundred and nineteen:

AND WHEREAS it is expedient that provision should be made by the Parliament of the Commonwealth of Australia for any matter necessary or proper for performing the obligations of the Commonwealth towards the other contracting parties arising under the Convention (including every Annex thereto) or arising under any modification or amendment of the Convention which may be made under Article thirty-four thereof and for intercourse by aerial navigation between the State of Victoria and any other country or any State of the Commonwealth:

AND WHEREAS at a conference of the Premiers of the States held in May One thousand nine hundred and twenty it was resolved that it was desirable that each of the Parliaments of the States should refer to the Parliament of the Commonwealth the matter of the control of air navigation subject to the retention by each of the States of certain rights and powers specified in the resolution:

AND WHEREAS in order to facilitate the carrying out of the objects of the said resolution it is expedient to provide that the matters hereinafter specified should be referred to the Parliament of the Commonwealth it is hereby enacted that the following matters are on the coming into operation of this Part referred to the Parliament of the Commonwealth (that is to say):—

(a) Any matter necessary or proper for performing the obligations of the Commonwealth towards the other contracting parties arising under the International Convention for the regulation of Aerial Navigation signed at Paris on the thirteenth day of October One thousand nine hundred and nineteen

* Part I. (containing sections 3 to 6), and Part II. (containing sections 7 to 9), have not been included in this volume, as they do not relate to the reference of matters by the Parliament of the State to the Parliament of the Commonwealth.

(including every Annex thereto) or arising under any modification or amendment of the Convention which may be made under Article thirty-four thereof · and

(*b*) Intercourse by aerial navigation between the State of Victoria and any other country or any State of the Commonwealth.

11. This Part shall come into operation on a day to be proclaimed by the Governor in Council by proclamation published in the *Government Gazette.** Commencement of Part.

SCHEDULE

Number of Act	Title of Act	Extent of Repeal
1672	*Commonwealth Arrangements Act* 1900	The whole
2809	*State Salaries (Commonwealth Taxation) Act* 1915	The whole
3108	*Commonwealth Powers (Air Navigation) Act* 1920	The whole

*NOTE Part III of this Act had not up to the date of the preparation of this volume, been proclaimed to come into operation

Act No. 4009.

DEBT CONVERSION AGREEMENT ACT 1931 (No. 2)

An Act to approve an Agreement between the Commonwealth of Australia of the First Part and the States of New South Wales, Victoria, Queensland, South Australia, Western Australia and Tasmania of the Second, Third, Fourth, Fifth, Sixth and Seventh Parts respectively relating to the Compulsory Conversion of the Internal Debts of the Commonwealth and the States in certain cases and to refer to the Parliament of the Commonwealth a certain Matter in connexion with the Compulsory Conversion of such Debts, and for other purposes.

[30th December, 1931.]

WHEREAS at a Conference between Ministers of the Commonwealth and Ministers of the States held in Melbourne in the months of August and September, One thousand nine hundred and thirty-one it was resolved that in view of the fact that holdings of ninety-seven per centum Preamble.

of Government securities had been voluntarily converted pursuant to the Commonwealth Act known as the *Commonwealth Debt Conversion Act* 1931, the Conference agreed that the small proportion of securities which had not been converted, should be converted on the same terms as the others, and that legislative action accordingly should be taken

Comm. 1931 No. 18

AND WHEREAS in order to carry out such resolution an Agreement (a copy of which is set out in the Schedule to this Act and which is referred to herein as the "Agreement") was made on the twenty second day of October One thousand nine hundred and thirty one between the Commonwealth of Australia of the first part the State of New South Wales of the second part the State of Victoria of the third part the State of Queensland of the fourth part the State of South Australia of the fifth part the State of Western Australia of the sixth part and the State of Tasmania of the seventh part relating to the conversion of the internal public debts of the Commonwealth and the States so far as the same have not been converted pursuant to the said *Commonwealth Debt Conversion Act* 1931

AND WHEREAS it is provided in the Agreement that the Agreement shall have full force and effect, and shall be binding on all the parties, when it is approved by the Parliaments of the Commonwealth and of the States

AND WHEREAS it is desirable to approve the Agreement so far as it relates to Victoria

AND WHEREAS it is enacted by the Constitution of the Commonwealth of Australia that the Parliament of the Commonwealth shall subject to the Constitution (that is to say, the Constitution of the Commonwealth) have power to make laws for the peace order and good government of the Commonwealth with respect to the matters referred to the Parliament of the Commonwealth by the Parliament or Parliaments of any State or States but so that the law shall extend only to States by whose Parliaments the matters are referred or which afterwards adopt the law

AND WHEREAS, in order to facilitate the enactment by the Parliament of the Commonwealth of legislation necessary for carrying out and giving effect to the Agreement, it is expedient to provide that a certain matter, that is to say, the compulsory conversion of existing securities into new securities within the meaning of these terms as defined in the said *Commonwealth Debt Conversion Act* 1931 in the cases where any such existing securities have not been converted into new securities in accordance with the provisions of the said Act and notwithstanding that any holders of those existing securities have signified or may signify their dissent under the provisions of the said Act, should be referred to the Parliament of the Commonwealth

BE it therefore enacted by the King's Most Excellent Majesty by and with the advice and consent of the Legislative Council and the Legislative Assembly of Victoria in this present Parliament assembled and by the authority of the same as follows (that is to say):—

Short title.

1 (1) This Act may be cited as the *Debt Conversion Agreement Act* 1931 (*No. 2*).

(2) Without prejudice to any other method of citation, the *Commonwealth and States Financial Agreement Act* 1927 and any enactment amending the same and the *Debt Conversion Agreement Act* 1931 and this Act may be cited together as the Commonwealth and States Financial Agreements Acts

Citation of Nos 3 554 3 959, 3,981 s 46 and this Act

2 (1) This Act shall come into force on a day to be fixed by proclamation of the Governor in Council published in the *Government Gazette* †

Commencement

(2) The Governor in Council may not make such proclamation unless he is satisfied that the Parliament of the Commonwealth and the Parliament of each of the States of New South Wales, Queensland, South Australia, Western Australia and Tasmania have respectively passed an Act approving the Agreement

Approval of Agreement by other Parliaments before coming into force of this Act

* * * * * * * *

5 (1) The following matter is hereby referred to the Parliament of the Commonwealth (that is to say)

Reference to the Commonwealth Parliament of a certain matter relating to the compulsory conversion of certain securities into new securities See Comm Constitution s 51 (xxxvii) Comm 1931 No 18

The compulsory conversion of existing securities into new securities within the meaning of these terms as defined in the Commonwealth Act known as the *Commonwealth Debt Conversion Act* 1931 in the cases where any such existing securities have not been converted into new securities in accordance with the provisions of the said Act and notwithstanding that any holders of those existing securities have signified or may signify their dissent under the said provisions

(2) For the purposes of sub section (1) of this section, the term "existing securities" does not include any Treasury Bills or securities mentioned in the proviso to clause 3 of the Agreement ‡

Saving

SCHEDULE §

† This Act was proclaimed to commence on 15th January 1932 See *Victoria Government Gazette* 12th January 1932 p 49

* Sections 3 and 4 of this Act have not been included in this volume as they do not relate to the reference of matters by the Parliament of the State to the Parliament of the Commonwealth

‡ The proviso to clause 3 of the Agreement in question is contained in Appendix C hereto *infra* p 186

§ The Schedule to this Act is the agreement which is contained in Appendix C *infra* pp 185 6

QUEENSLAND.

12 George V. No. 30.

THE COMMONWEALTH POWERS (AIR NAVIGATION) ACT OF 1921

12 George V No. 30
The Commonwealth Powers (Air Navigation) Act of 1921

An Act to refer to the Parliament of the Commonwealth the control of Air Navigation; and for purposes connected therewith.

[Assented to 15th November, 1921.]

WHEREAS it is enacted by the Constitution of the Commonwealth of Australia that the Parliament of the Commonwealth shall, subject to the Constitution, have power to make laws for the peace, order, and good government of the Commonwealth with respect to matters referred to the Parliament of the Commonwealth by the Parliament or Parliaments of any State or States, but so that the law shall extend only to States by whose Parliaments the matter is referred, or which afterwards adopt the law

AND WHEREAS a convention for determining by a common agreement certain uniform rules with respect to international air navigation was signed on behalf of His Majesty in Paris on the thirtieth day of October, one thousand nine hundred and nineteen

AND WHEREAS it is expedient that provision should be made by the Parliament of the Commonwealth for the control and regulation of the navigation of aircraft and for enabling effect to be given to the said convention:

AND WHEREAS at a conference of the Premiers of the States held in May, one thousand nine hundred and twenty, it was resolved that it is desirable that each of the Parliaments of the States should refer to the Parliament of the Commonwealth the matter of the control of air navigation, subject to the retention by each of the States of certain rights and powers specified in the resolution

BE it therefore enacted by the King's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of Queensland in Parliament assembled, and by the authority of the same, as follows —

Short title

1 This Act may be cited as "*The Commonwealth Powers* (*Air Navigation*) *Act* of 1921 "

Control of air navigation referred to Commonwealth Parliament.

2 Subject to the limitations and reservations in this Act contained, the control of air navigation is referred to the Parliament of the Commonwealth.

Saving.

3. Nothing in this Act shall empower the Parliament of the Commonwealth, or any authority constituted or to be constituted under the Commonwealth, to affect or restrict the rights and powers of the State of Queensland in regard to –

(*a*) The acquisition or ownership by the said State of aircraft or aerodromes, or

(*b*) The use for the purpose of the Government of the said State of aircraft operating within the said State, or

(*c*) Police powers,

and such rights and powers shall be retained by the said State as if this Act had not been passed.

Date of operation.

4 This Act shall come into operation on a day to be fixed by the Governor in Council by proclamation published in the *Gazette* *

* NOTE.—This Act had not up to the date of the preparation of this volume, been proclaimed to come into operation.

---

22 George V. No. 30.

THE COMMONWEALTH LEGISLATIVE POWER ACT, 1931

22 Geo V. No 30 The Commonwealth Legislative Power Act of 1931.

An Act to refer to the Parliament of the Commonwealth, pursuant to section 51, XXXVII., of the Constitution of the Commonwealth, Power to make Laws with respect to the Compulsory Conversion of certain Securities.

[Assented to 16th December, 1931.]

BE it enacted by the King's Most Excellent Majesty, by and with the advice and consent of the Legislative Assembly of Queensland in Parliament assembled, and by the authority of the same, as follows: –

Short title.

1. This Act may be cited as "*The Commonwealth Legislative Power Act*, 1931," and shall come into force on a date to be fixed by the Governor in Council by Proclamation published in the *Gazette* *

Reference to Commonwealth of certain legislative power.

2. The Parliament of the State of Queensland hereby refers to the Parliament of the Commonwealth power to make laws for the peace, order, and good government of the Commonwealth with respect to the following matter, namely –

* This Act was proclaimed to come into force on 7th January, 1932. See *Queensland Government Gazette*, 9th January, 1932, p. 25.

The compulsory conversion of existing securities into new securities within the meaning of these terms as defined in the Commonwealth Act known as the *Commonwealth Debt Conversion Act*, 1931, in the cases where any such existing securities have not been converted into new securities in accordance with the provisions of the said Act, and notwithstanding that any holders of those existing securities have signified or may signify their dissent under the said provisions.

For the purposes of this section, the term "existing securities" does not include any Treasury bills or securities mentioned in the proviso to clause three of the Agreement contained in the Schedule to "*The Debt Conversion (Further Agreement) Act of* 1931."*

* NOTE.—The proviso to clause 3 of the Agreement in question is contained in Appendix C hereto, *infra*, p 186

SOUTH AUSTRALIA.

No. 1469.

COMMONWEALTH POWERS (AIR NAVIGATION) ACT 1921.

An Act to refer to the Parliament of the Commonwealth certain matters in connexion with Air Navigation.

[Assented to, 23rd November, 1921.]

Preamble

WHEREAS it is enacted by the Constitution of the Commonwealth of Australia that the Parliament of the Commonwealth shall, subject to the Constitution, have power to make laws for the peace, order and good government of the Commonwealth with respect to matters referred to the Parliament of the Commonwealth by the Parliament or Parliaments of any State or States, but so that the law shall extend only to States by whose Parliaments the matter is referred or which afterwards adopt the law:

AND WHEREAS a Convention (in this Act referred to as "the Convention") for determining by a common agreement certain uniform rules with respect to international air navigation was signed on behalf of His Majesty in Paris on the thirteenth day of October, one thousand nine hundred and nineteen:

AND WHEREAS it is expedient that provision should be made by the Parliament of the Commonwealth of Australia for any matter necessary or proper for performing the obligations of the Commonwealth towards the other contracting parties arising under the Convention (including every Annex thereto) or arising under any modification or amendment of the Convention which may be made under Article thirty-four thereof, and for intercourse by aerial navigation between the State of South Australia and any other country or any State of the Commonwealth:

AND WHEREAS at a conference of the Premiers of the States held in May, one thousand nine hundred and twenty, it was resolved that it was desirable that each of the Parliaments of the States should refer to the Parliament of the Commonwealth the matter of the control of air navigation, subject to the retention by each of the States of certain rights and powers specified in the resolution:

AND WHEREAS in order to facilitate the carrying out of the objects of the said resolution it is expedient to provide that the matters hereinafter specified should be referred to the Parliament of the Commonwealth—

BE it therefore enacted by the Governor of the State of South Australia, with the advice and consent of the Parliament thereof, as follows:

Short title.

1. This Act may be cited as the *Commonwealth Powers (Air Navigation) Act* 1921.

Commencement.

2. This Act shall come into operation on a day to be fixed by proclamation.*

Matters referred to the Parliament of the Commonwealth (M. Victoria 3198, 1920, s. 2.

3. The following matters are hereby referred to the Parliament of the Commonwealth (that is to say):—

I. Any matter necessary or proper for performing the obligations of the Commonwealth towards the other contracting parties arising under the International Convention for the Regulation of Aerial Navigation signed at Paris on the thirteenth day of October, one thousand nine hundred and nineteen (including every Annex thereto), or arising under any modification or amendment of the Convention which may be made under Article thirty four thereof, and

II. Intercourse by aerial navigation between the State of South Australia and any other country or any State of the Commonwealth.

In the name and on behalf of His Majesty, I hereby assent to this Bill.

W. E. G. A. WEIGALL, Governor.

* NOTE. This Act had not, up to the date of the preparation of this volume, been proclaimed to come into operation

Act No. 2061.

COMMONWEALTH LEGISLATIVE POWER ACT, 1931.

An Act to refer to the Parliament of the Commonwealth, pursuant to section 51, XXXVII., of the Constitution of the Commonwealth, power to make Laws with respect to the Compulsory Conversion of certain Securities.

[Assented to, December 9th, 1931.]

BE it enacted by the Governor of the State of South Australia, with the advice and consent of the Parliament thereof, as follows:

Short title.

1. This Act may be cited as the "Commonwealth Legislative Power Act, 1931".

Reference to Commonwealth of certain legislative power.

2. (1) The Parliament of the State hereby refers to the Parliament of the Commonwealth power to make laws for the peace, order, and good

government of the Commonwealth with respect to the following matter, namely :—

The compulsory conversion of existing securities into new securities within the meaning of these terms as defined in an Act of the Parliament of the Commonwealth, entitled the *Commonwealth Debt Conversion Act*, 1931, in the cases where any such existing securities have not been converted into new securities in accordance with the provisions of the said Act, and notwithstanding that any holders of such existing securities have signified or may signify their dissent under the provisions of the said Act

(2) For the purpose of sub-section (1) of this section the term "existing securities" does not include any Commonwealth Treasury Bills issued to a Bank in Australia with the approval of the Australian Loan Council, or any securities issued with the like approval to such a Bank in exchange for such Bills

In the name and on behalf of His Majesty, I hereby assent to this Bill

A HORE RUTHVEN, Governor.

NOTE.—This Act came into operation on the date of assent

TASMANIA.

11 George V., No. 42.

COMMONWEALTH POWERS (AIR NAVIGATION) ACT 1920

Preamble

An Act to refer to the Parliament of the Commonwealth the Control of Air Navigation; and for purposes connected therewith.

[20 December 1920.]

WHEREAS it is enacted by the Constitution of the Commonwealth of Australia that the Parliament of the Commonwealth shall, subject to the constitution, have power to make laws for the peace, order and good government of the Commonwealth with respect to matters referred to the Parliament of the Commonwealth by the Parliament or Parliaments of any State or States, but so that the law shall extend only to States by whose Parliaments the matter is referred, or which afterwards adopt the law

AND WHEREAS a convention for determining by a common agreement certain uniform rules with respect to international air navigation was signed on behalf of His Majesty in Paris on the Thirtieth day of October, One thousand nine hundred and nineteen

AND WHEREAS it is expedient that provision should be made by the Parliament of the Commonwealth for the control and regulation of the navigation of aircraft and for enabling effect to be given to the said convention

AND WHEREAS at a conference of the Premiers of the States held in May, One thousand nine hundred and twenty, it was resolved that it is desirable that each of the Parliaments of the States should refer to the Parliament of the Commonwealth the matter of the control of air navigation, subject to the retention by each of the States of certain rights and powers specified in the resolution

BE it therefore enacted by His Excellency the Governor of Tasmania, by and with the advice and consent of the Legislative Council and House of Assembly in Parliament assembled, as follows

Short title.

1. This Act may be cited as the "Commonwealth Powers (Air Navigation) Act 1920."

2. Subject to the limitations and reservations in this Act contained, the control of air navigation is referred to the Parliament of the Commonwealth

Control of air navigation referred to Commonwealth Parliament.

3 Nothing in this Act shall empower the Parliament of the Commonwealth, or any authority constituted or to be constituted under the Commonwealth, to affect or restrict the right of the State of Tasmania in regard to

Saving

I The acquisition or ownership by the said State of aircraft or aerodromes or

II The use for the purpose of the Government of the said State of aircraft operating within the said State or

III Police powers –

and such rights and powers shall be retained by the said State as if this Act had not been passed

NOTE This Act came into operation on the 11th August

APPENDIX C.

AGREEMENTS MADE BETWEEN THE COMMONWEALTH AND THE STATES IN RELATION TO THE PUBLIC DEBTS OF THE STATES.

LIST OF AGREEMENTS INCLUDED IN THIS APPENDIX

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FINANCIAL AGREEMENT

(Made 12th December 1927)

AGREEMENT made the twelfth day of December One thousand nine hundred and twenty seven BETWEEN THE COMMONWEALTH OF AUSTRALIA (in this Agreement called the Commonwealth) of the first part THE STATE OF NEW SOUTH WALES of the second part, THE STATE OF VICTORIA of the third part THE STATE OF QUEENSLAND of the fourth part, THE STATE OF SOUTH AUSTRALIA of the fifth part, THE STATE OF WESTERN AUSTRALIA of the sixth part and THE STATE OF TASMANIA of the seventh part (each of the parties of the second third, fourth, fifth sixth, and seventh parts being in this Agreement referred to as a State and the expression the States hereinafter used meaning where the context so permits or requires all of such parties)

WHEREAS with a view to making provision for the adjustment of Commonwealth and State financial relations the general principle of a draft scheme was affirmed by a Conference of Commonwealth and State Ministers in Melbourne which commenced on the sixteenth day of June One thousand nine hundred and twenty seven

AND WHEREAS permanent effect cannot be given to the proposals contained in the said scheme unless the Constitution of the Commonwealth is altered so as to confer on the Parliament of the Commonwealth power to make laws for carrying out or giving permanent effect to such proposals

AND WHEREAS pending the submission to the electors of a proposed law for the alteration of the said Constitution as aforesaid an endeavour to obtain immediately some of the advantages which would result from united action by adoption of the said scheme the Commonwealth and the States have agreed that for the period commencing on the first day of July One thousand nine hundred and twenty seven and ending on the thirtieth day of June One thousand nine hundred and twenty nine certain of the proposed provisions of the said scheme shall be temporarily adopted

NOW THIS AGREEMENT WITNESSETH

PART I

1 This Agreement shall have no force or effect and shall not be binding on any party unless and until it is approved by the Parliaments of the Commonwealth and of the States *

---

* NOTE – This Agreement was approved by the Parliament of the Commonwealth by the *Financial Agreement Act* 1928 (No 1 1928) and was validated by that Parliament by the *Financial Agreement Validation Act* 1929 (No 4 1929)

It was approved and ratified by the Parliaments of the States of New South Wales Queensland and Tasmania and was approved by the Parliaments of the States of Victoria South Australia and Western Australia the respective Acts being

New South Wales Financial Agreement Ratification Act 1928 (No 14 1928)
Victoria Commonwealth and States Financial Agreement Act 1927 (No 3534 1927)
Queensland The Commonwealth and States Financial Agreement Ratification Act of 1927 (18 Geo V No 22)
South Australia Financial Agreement Act 1927 (No 1897 1927)
Western Australia Financial Agreement Act 1928 (No 1 of 1928)
Tasmania The Financial Agreement Act 1927 (18 Geo V No 97)

PART I.—*continued.*

2. DEFINITIONS.

In this Agreement—

"*Net Public Debt of a State existing on 30th June, 1927,*" means in respect of each State the amount of debt set forth hereunder opposite to the name of that State, viz.:—

New South Wales	£234,088,501
Victoria	136,949,942
Queensland	101,977,855
South Australia	84,834,364
Western Australia	61,060,675
Tasmania	22,434,060
	£641,345,397

The said amount of the net public debt of each State includes the debts of that State secured by—

(i) Inscribed Stock, including Local Inscribed Stock and Government Inscribed Stock,
(ii) Instalment Stock;
(iii) Registered Stock;
(iv) Funded Stock;
(v) Stock payable to bearer,
(vi) Bonds, including registered bonds,
(vii) Debentures, including registered debentures and instalment debentures;
(viii) Treasury Bills not repayable within twelve months from the date of issue, or
(ix) Fixed deposit receipts or special deposit receipts for moneys borrowed for other than temporary purposes;

issued or created by the State or by or on behalf of a Colony the predecessor of the State in respect of moneys borrowed by the Colony or State together with debts of the State to the Commonwealth of the amount set out respectively hereunder opposite to the name of the State so far as those last mentioned debts are not included by being secured in manner aforesaid—

New South Wales	£12,553,698
Victoria	23,688,269
Queensland	16,082,583
South Australia	18,446,197
Western Australia	16,739,872
Tasmania	3,948,613
	£91,459,232

after deducting therefrom the amount for which the Commonwealth by this Agreement assumes liability under Part III, Clause 4, of this Agreement and the amount of any moneys or securities standing to the credit of a sinking fund, redemption fund, or a fund of a like nature of the State as on 30th June, 1927, and does not include any moneys raised by the State by way of overdraft, fixed deposit, or special deposit for temporary purposes only.

The said sum of £234,088,501 (being the amount of the debt of New South Wales abovementioned) comprises the debts referred to in, and has been computed in the manner shown in, the statement signed by representatives of the Commonwealth and of New South Wales.

"*Gross Public Debt of a State existing on 30th June, 1927,*" means in respect of each State the amount of debt set forth hereunder opposite to the name of that State, viz.—

New South Wales	£239,441,363
Victoria	144,844,530
Queensland	105,259,916
South Australia	87,614,005
Western Australia	70,705,913
Tasmania	24,254,688
	£672,120,415

PART I., CLAUSE 2—*continued.*

The said amount of the gross public debt of each State includes the net public debt of that State together with the amount for which the Commonwealth by this Agreement assumes liability under Part III., Clause (4) of this Agreement and the amount of any moneys or securities standing to the credit of any sinking fund redemption fund or fund of a like nature of the State as on 30th June, 1927.

"*Transferred Properties*" means the properties mentioned or specified in the Schedule of Transferred Properties signed by representatives of the Commonwealth and the States as revised to the 30th June, 1927, being properties which became vested in the Commonwealth pursuant to Section 85 (i) of the Constitution of the Commonwealth

"*The Loan Council*" means the Australian Loan Council created in pursuance of this Agreement

"*Bondholder*" means an owner of any

(i) Inscribed Stock, including Local Inscribed Stock and Government Inscribed Stock,
(ii) Instalment Stock,
(iii) Registered Stock,
(iv) Funded Stock,
(v) Stock payable to bearer,
(vi) Bonds including registered bonds
(vii) Debentures including registered debentures and instalment debentures
(viii) Treasury Bills not payable within twelve months from the date of issue or
(ix) Fixed deposit receipts or special deposit receipts for moneys borrowed for other than temporary purposes

issued or created by a State or by or on behalf of a Colony the predecessor of the State in respect of borrowed moneys but does not include the Commonwealth

3 AUSTRALIAN LOAN COUNCIL

(*a*) There shall be an Australian Loan Council which shall consist of one Minister of State of the Commonwealth to be appointed in writing from time to time by the Prime Minister of the Commonwealth to represent the Commonwealth and one Minister of State of each State to be appointed in writing from time to time by the Premier of that State to represent that State Provided that if in the opinion of the Prime Minister or of any Premier of a State, special circumstances exist at any time which make it desirable so to do, a person who is not a Minister may stand in the stead of a Minister be appointed by the Prime Minister or the Premier as the case may be to represent the Commonwealth or a State as a member of the Loan Council The name of each person appointed to represent a State shall be notified in writing by the Premier of that State to the Prime Minister *

(*b*) The member representing the Commonwealth on the Loan Council shall hold office during the pleasure of the Prime Minister of the Commonwealth and a member representing a State shall hold office during the pleasure of the Premier of the State which the member was appointed to represent

(*c*) A decision in which all the members for the time being of the Loan Council concur shall be a unanimous decision of the Loan Council notwithstanding any vacancy then existing in its membership

(*d*) A meeting of the Loan Council may at any time be convened by the member representing the Commonwealth, and shall be so convened upon the request of at least three members representing States

(*e*) A majority of the members of the Loan Council shall constitute a quorum of the Loan Council for the exercise of its powers at any meeting Provided that

(i) a member may at any time appoint in writing a deputy to act in his absence and any deputy so appointed may in the absence of the member exercise all the powers and functions of the member and his presence shall be deemed the presence of the member and
(ii) an absent member who has not appointed a deputy may vote by letter or by telegram, and in such case that member shall be counted as being present in relation only to the questions on which he has voted

(*f*) The Loan Council may make rules of procedure including rules relating to places, times, and notices of meetings, and conduct of business at meetings, and from time to time may alter such rules

(*g*) The Commonwealth and each State will from time to time while Part II. of this Agreement is in force, and while Part III. of this Agreement is in force, submit to the Loan Council a programme setting forth the amount it desires to raise by loans for each

* NOTE.—This paragraph (*a*) has since been omitted by clause 18 of the Agreement dated 3rd July 1934, relating to Soldier Settlement Loans and a fresh paragraph has been substituted therefor For new paragraph, see *infra* pp. 191–2

PART I., CLAUSE 3—*continued*

financial year for the purposes other than the conversion, renewal or redemption of existing loans or temporary purposes Each programme shall state the estimated total amount of such loan expenditure for the year, and the estimated amount of repayments which will be available towards meeting that expenditure Any revenue deficit to be funded shall be included in such loan programme, and the amount of such deficit shall be set out Loans for Defence purposes approved by the Parliament of the Commonwealth shall not be included in the Commonwealth's loan programme or be otherwise subject to this agreement

(*h*) If the Loan Council decides that the total amount of the loan programme for the year cannot be borrowed at reasonable rates and conditions it shall decide the amount to be borrowed for the year and may by unanimous decision allocate such amount between the Commonwealth and the States

(*i*) If the members of the Loan Council fail to arrive at a unanimous decision under the last preceding sub clause allocating the amount to be borrowed for any year, the amount to be borrowed for that year shall be allocated as follows

(i) The Commonwealth shall, if it so desires be entitled to have one fifth or any less proportion of such amount allocated to the Commonwealth and

(ii) Each State shall be entitled to have allocated to it a sum (being a portion of the balance of such amount) bearing to the balance of such amount the same proportion which the net loan expenditure of that State in the preceding five years bears to the net loan expenditure of all the States during the same period Provided that any State may if it so desires have allocated to it a sum less than the sum to which it is entitled under this sub clause or no sum, and that when a less sum or no sum has been allocated to any State or States in manner aforesaid the amount then remaining available for allocation shall be allocated to the other States in the proportion which the net loan expenditure of each of such other States in the preceding five years bears to the net loan expenditure of all such other States during the same period For the purposes of this sub clause net loan expenditure does not include expenditure for the conversion, renewal or redemption of loans, but means the gross other loan expenditure of a State less any amounts of such expenditure repaid to the State other than moneys repaid to the State in manner stated in Part II clause 4 (*e*) or Part III clause 3 (*i*), of this Agreement

(*j*) If the total amount to be borrowed as aforesaid for any year is to be borrowed by means of more than one loan the Loan Council may by unanimous decision apportion between the Commonwealth and the States the amount to be borrowed by each such loan other than the loan by means of which the balance of the total amount to be borrowed as aforesaid for the year is borrowed

(*k*) If the members of the Loan Council fail to arrive at a unanimous decision under the last preceding sub clause apportioning the amount to be borrowed as aforesaid by any loan the amount to be borrowed by that loan shall be apportioned between the Commonwealth and the States in proportion to the amount then to be borrowed as aforesaid for the Commonwealth and for each State for the year

(*l*) The Commonwealth and each State will also from time to time while Part II of this Agreement is in force and while Part III of this Agreement is in force, submit to the Loan Council a statement setting out the amount it requires for each financial year for the conversion, renewal or redemption of existing loans

(*m*) If the members of the Loan Council fail to arrive at a unanimous decision on any matter other than the matters referred to in sub clauses (*h*) and (*j*) of clause 3 and sub clause (*b*) of clause 4 of this part of this Agreement, the matter shall be determined by a majority of votes of the members

On every question for decision by the Loan Council the member representing the Commonwealth shall have two votes and a casting vote and each member representing a State shall have one vote

(*n*) A decision of the Loan Council in respect of a matter which the Loan Council is by this Agreement empowered to decide shall be final and binding on all parties to this Agreement

(*o*) In this clause the expressions "Prime Minister" and "Premier" include the persons for the time being respectively acting as such

4 FUTURE BORROWINGS OF COMMONWEALTH AND STATES

(*a*) Except in cases where the Loan Council has decided under sub-clause (*b*) of this clause that moneys shall be borrowed by a State, the Commonwealth, while Part II or Part III of this Agreement is in force, shall, subject to the decisions of the Loan Council and subject also to clauses 5 and 6 of this Part of this Agreement, arrange for

PART I, CLAUSE 4—*continued*

all borrowings for or on behalf of the Commonwealth or any State, and for all conversions, renewals, redemptions, and consolidations of the Public Debts of the Commonwealth and of the States.

(*b*) If at any time the Loan Council by unanimous decision so decides a State may in accordance with the terms of the decision borrow moneys outside Australia in the name of the State, and issue securities for the moneys so borrowed. The Commonwealth shall guarantee that the State will perform all its obligations to bondholders in respect of the moneys so borrowed. For all the purposes of this Agreement, including the making of sinking fund contributions, the moneys so borrowed shall be deemed to be moneys borrowed by the Commonwealth for and on behalf of that State.

(*c*) If any State after the 30th June, 1927, and before this Agreement has been approved by the Parliaments of the Commonwealth and of the States, has borrowed moneys in the name of the State and issued securities for the moneys so borrowed, such moneys shall, for all the purposes of this Agreement, including the making of sinking fund contributions, be deemed to be moneys borrowed by the Commonwealth for and on behalf of that State.

(*d*) While Part II or Part III of this Agreement is in force, moneys shall not be borrowed by the Commonwealth or any State otherwise than in accordance with this Agreement.

5. BORROWING BY STATES.

For any purpose (including the refunding of securities given or issued at any time for moneys previously borrowed or used in manner stated in this clause) a State may, while Part II or Part III of this Agreement is in force—

(*a*) Subject to any maximum limits decided upon by the Loan Council from time to time for interest, brokerage, discount, and other charges, borrow moneys within the State from authorities, bodies, funds or institutions (including Savings Banks) constituted or established under Commonwealth or State law or practice and from the public by counter sales of securities; and

(*b*) use any public moneys of the State which are available under the laws of the State.

Any securities that are issued for moneys so borrowed or used shall be Commonwealth securities, to be provided by the Commonwealth upon terms approved by the Loan Council.

Where any such borrowing or use is solely for temporary purposes, the provisions of this Agreement, other than this clause, shall not apply.

Where any such borrowing or use is not solely for temporary purposes, and Commonwealth securities are issued in respect thereof, the moneys borrowed or used shall be deemed to be moneys borrowed by the Commonwealth for and on behalf of the State, and may be retained by the State. A State may convert securities given or issued at any time by that State for moneys previously borrowed or used in manner stated in this clause. New securities issued on any such conversion shall be Commonwealth securities to be provided by the Commonwealth upon terms approved by the Loan Council. The amount for which such new securities are issued shall be deemed to be moneys borrowed by the Commonwealth for and on behalf of the State.

If the moneys deemed under this clause to be moneys borrowed by the Commonwealth on behalf of a State, together with the amounts raised by the Commonwealth for and on behalf of the State exceed the total amount of loan moneys decided upon by the Loan Council as the moneys to be raised for and on behalf of the State for the financial year in which the money is deemed to be borrowed, the excess shall, unless the Loan Council otherwise decides, be deemed to be moneys received by the State in the following year on account of its loan programme for that year.

For the purposes of this clause counter sales of securities shall be deemed to mean sales of securities made at the offices of the State Treasury, and at such other places as may be decided upon by the Loan Council.

The Commonwealth shall not be under any obligation to make sinking fund contributions in respect of moneys borrowed or used pursuant to this clause to meet a revenue deficit of a State, but the provisions of clause 4 (*d*) of Part II and of clause 3 (*j*) of Part III of this Agreement shall apply respectively to all moneys borrowed or used for that purpose.

Except in cases where the Loan Council has otherwise decided under sub-clause (*b*) of clause 4 of Part I of this Agreement a State shall not have the right to invite loan subscriptions by the issue of a public prospectus.

Notwithstanding anything contained in this Agreement, any State may use for temporary purposes any public moneys of the State which are available under the laws of the State, or may, subject to maximum limits (if any) decided upon by the Loan Council from time to time for interest, brokerage, discount, and other charges, borrow

PART I. CLAUSE 5—*continued.*

money for temporary purposes by way of overdraft, or fixed, special, or other deposit, and the provisions of this Agreement other than this paragraph shall not apply to such moneys

6 BORROWING BY COMMONWEALTH

For any purpose (including the redemption of securities given or issued at any time for moneys previously borrowed or used in manner stated in this clause) the Commonwealth may—while Part II or Part III of this Agreement is in force—

(*a*) Subject to any maximum limits decided upon by the Loan Council from time to time for interest, brokerage, discount and other charges, borrow moneys within the Commonwealth from authorities, bodies, funds or institutions (including Savings Banks) constituted or established under Commonwealth or State law or practice and from the public by counter sales of securities, and

(*b*) use any public moneys of the Commonwealth which are available under the laws of the Commonwealth

Any securities that are issued for moneys so borrowed or used shall be Commonwealth securities, to be provided by the Commonwealth upon terms approved by the Loan Council

Where any such borrowing or use is solely for temporary purposes, the provisions of this Agreement, other than this clause, shall not apply

Where any such borrowing or use is not solely for temporary purposes, and Commonwealth securities are issued in respect thereof, the moneys borrowed or used may be retained by the Commonwealth The Commonwealth may convert securities given or issued at any time by the Commonwealth for moneys previously borrowed or used in manner stated in this clause New securities issued on any such conversion shall be Commonwealth securities to be provided by the Commonwealth upon terms approved by the Loan Council

If the moneys so borrowed or used are not borrowed or used solely for temporary purposes and Commonwealth securities are issued in respect thereof, and such moneys, together with other moneys borrowed by the Commonwealth for and on behalf of the Commonwealth as part of the total amount of loan moneys decided upon by the Loan Council as the moneys to be raised for and on behalf of the Commonwealth for the financial year in which the securities are issued, exceed such total amount the excess shall unless the Loan Council otherwise decides be deemed to be moneys received by the Commonwealth in the following year on account of its loan programme for that year.

For the purposes of this clause *counter sales of securities* shall be deemed to mean sales of securities made at the offices of the Commonwealth Treasury, and at such other places as may be decided upon by the Loan Council

Notwithstanding anything contained in this Agreement, the Commonwealth may use for temporary purposes any public moneys of the Commonwealth which are available under the laws of the Commonwealth or may, subject to maximum limits (if any) decided upon by the Loan Council from time to time for interest, brokerage, discount, and other charges, borrow money for temporary purposes by way of overdraft, or fixed, special or other deposit, and the provisions of this Agreement other than this paragraph shall not apply to such moneys

7 PAYMENT OF INTEREST AND SINKING FUNDS.

In the event of Part III of this Agreement not coming into force each State shall in respect of all moneys borrowed by the Commonwealth for and on behalf of that State during the period commencing on the 1st July, 1927, and ending on the 30th June, 1929—

(*a*) pay to the Commonwealth interest at the full rate of interest payable by the Commonwealth in respect of the loan by which such moneys were borrowed or such other rate of interest as may be payable by that State to the Commonwealth under any agreement made or to be made between the Commonwealth and that State in respect of such moneys Such interest shall be payable for the full term of that loan and be paid to the Commonwealth on the respective days upon which interest is payable by the Commonwealth in respect of that loan, and

(*b*) make sinking fund contributions to the National Debt Commission in respect of the loan by which such moneys were borrowed at the full rate, and for the portion unexpired on the 30th June, 1929 of the full period, provided for in the conditions under which the public were invited to subscribe to that loan; and

PART I, CLAUSE 7—*continued.*

(c) pay to the Commonwealth when the loan matures an amount which (together with the sinking fund contributions made by the Commonwealth and the State in respect of that loan and the accumulations of such contributions) will be sufficient to provide for the redemption of that loan For the purposes of this sub-clause such contributions shall be deemed to accumulate at the rate of 4½ per centum per annum compounded.

PART II

1. This part of this Agreement shall be in force only during and in respect of the period of two years, commencing on 1st July, 1927, and ending on 30th June 1929

2 CONTRIBUTION BY COMMONWEALTH TO INTEREST

The Commonwealth will in each of the said two years pay to each State by equal monthly instalments the amount set out opposite to the name of that State as shown hereunder :—

New South Wales	£2,917,411
Victoria	2,127,159
Queensland	1,096,235
South Australia	703,816
Western Australia	473,432
Tasmania	266,859
	£7,584,912

Each State shall apply the amount so paid to it towards payment of interest due by that State on the Public Debt of that State All amounts paid by the Commonwealth to a State in pursuance of Section 6 of the *States Grants Act* 1927, of the Commonwealth shall be deemed to be payments to that State under this clause

3 TRANSFERRED PROPERTIES

The Commonwealth will in each of the said two years pay to each State interest at the rate of 5 per centum per annum on the agreed value of transferred properties in the State, such value being in the case of each State as follows

New South Wales	£1,788,005
Victoria	2,302,862
Queensland	1,760,639
South Australia	1,035,631
Western Australia	736,432
Tasmania	500,754
Total	£10,924,323

4 SINKING FUNDS

(a) In each of the said two years the Commonwealth will pay from revenue a sinking fund contribution at the rate of 2s 6d per annum for each £100 of the net Public Debts of the States existing on 30th June, 1927, and each State (other than the State of New South Wales) will pay from revenue a sinking fund contribution at the rate of 5s. per annum for each £100 of the net public debt of that State existing on 30th June, 1927. The State of New South Wales will in the financial year commencing 1st July, 1928, pay from revenue a sinking fund contribution at the rate of 5s for each £100 of the net public debt of that State existing on 30th June, 1927

(b) Where in respect of any debt included in the gross public debt of a State existing on 30th June, 1927, there is under laws or contracts existing at that date an obligation to provide a sinking fund at a rate in excess of 2s 6d per annum for each £100, any amount to be so provided in excess of the rate of 7s 6d per annum for each £100 shall be provided out of the National Debt Sinking Fund established under the laws of the Commonwealth. Provided that if any law imposing such an obligation is repealed or is amended so as to reduce the rate of sinking fund to be provided, the only amount (if any) to be provided out of the National Debt Sinking Fund pursuant to this sub-clause in respect of that debt shall, as from the date of such repeal or amendment, be the amount (if any) by which the reduced rate of sinking fund for the time being exceeds 7s. 6d. per annum for each £100.

PART II, CLAUSE 4—*continued*

(*c*) In respect of each loan raised after the 30th June, 1927, either by a State or by the Commonwealth for and on behalf of a State (other than a loan raised for the conversion, renewal, or redemption of a loan or for temporary purposes) the Commonwealth and that State shall, subject to the next succeeding sub clause as from the date of the raising of that loan, each pay from revenue a sinking fund contribution at the rate of five shillings (5s) per annum for each £100 of the amount of such loan Provided, however, that the liability of the State of New South Wales to make sinking fund contributions under this sub clause shall commence on the 1st July, 1928 The provisions of this sub clause apply to a loan raised after the 30th June, 1927, to meet a revenue deficit which accrued on or before that date

(*d*) In respect of any loan raised after 30th June, 1927, by a State or by the Commonwealth for and on behalf of a State to meet a revenue deficit accruing after that date no sinking fund contribution shall be payable by the Commonwealth, but that State shall pay from revenue a sinking fund contribution at a rate of not less than 4 per centum per annum on the amount of that loan

(*e*) Where loan moneys have been advanced by a State under terms providing for the repayment of such moneys the State shall as and when such moneys are repaid pay such moneys either to the State Loan Fund or to the account or fund from which such moneys were advanced or to the sinking fund hereinafter mentioned and shall, in addition, make from revenue its sinking fund contributions in respect of the loan or loans from which the moneys so advanced were provided

Provided that when loan moneys have been advanced by a State to a Public or Local Authority or body constituted by the State or under the laws of the State and the Authority or body repays such moneys out of its revenue the State may out of moneys so repaid make its sinking fund contributions in respect of the loan moneys so advanced

(*f*) All sinking fund contributions to be made in pursuance of this Part of this Agreement shall be paid to the National Debt Commission constituted under the *National Debt Sinking Fund Act* 1923 2) of the Commonwealth (herein called the National Debt Commission) as follows

(i) as regards the net public debt of a State existing on 30th June, 1927 by half yearly instalments on 30th September and 31st March in each financial year, or on such other dates as may be agreed between the Commonwealth and the State

(ii) as regards loans raised after 30th June 1927 by equal instalments on the dates on which interest on such loans is payable or on such other dates as may be agreed upon between the Commonwealth and the State concerned

(*g*) Where the conditions relating to sinking funds redemption funds and funds of a like nature require payments to be made to trustees the National Debt Commission will either directly or through any State concerned make the necessary payments to those trustees

(*h*) The sinking fund contributions made under this Part of this Agreement in respect of the Public Debt of a State (other than contributions paid or to be paid to trustees under the last preceding sub clause hereof) shall (unless the same will suffice be applied in the repurchase or redemption of the Public Debt of that State and in the event of the proposed law for the alteration of the Constitution referred to in Part IV of this Agreement not becoming law and of this Agreement not being validated thereunder, on or before the 30th June, 1929 all State securities repurchased or redeemed as aforesaid shall be cancelled with the exception of securities the market value of which represents the amount of money provided in excess of the rate of 7s 6d per annum for each £100 under paragraph (*b*) of this clause which latter securities shall be retained by and belong to the National Debt Commission

PART III

This Part of this Agreement shall not come into force or be binding upon any party hereto unless before the 1st July, 1929 the Constitution of the Commonwealth has been altered in accordance with the proposals referred to in Part IV of this Agreement and a law of the Parliament of the Commonwealth has been made thereunder validating this Agreement, but shall come into full force and effect if and when before the said date the Constitution is so altered and this Agreement is so validated

When this Part of this Agreement comes into force every matter or thing done and payment made under or in pursuance of Part II of this Agreement shall be deemed, so far as is practicable, to have been done or made under this Part of this Agreement to the same extent as if this Part had then in fact been in force, and all necessary adjustments shall be made in respect of moneys so paid in order to ensure that no party hereto shall be liable for or make double payments in respect of the same matter

PART III —*continued*

PERMANENT PROVISIONS.

1 TAKING OVER STATES' PUBLIC DEBTS

Subject to the provisions of this Part of this Agreement the Commonwealth will take over on the 1st July, 1929 —

(i) the balance then unpaid of the gross public debt of each State existing on 30th June, 1927, and

(ii) all other debts of each State existing on the 1st July, 1929, for moneys borrowed by that State which by this Agreement are deemed to be moneys borrowed by the Commonwealth for and on behalf of that State

and will in respect of the debts so taken over assume as between the Commonwealth and the States the liabilities of the States to bondholders

2 PAYMENT OF INTEREST

(*a*) Subject to this [illegible] the Commonwealth will pay to the [illegible] in relation to time interest payable on the Public Debts of the States taken over by the Commonwealth as aforesaid other than debts due by the States to the Commonwealth

(*b*) The Commonwealth will in each year during the period of 58 years commencing on 1st July, 1927, provide by equal monthly instalment the following amounts in respect of each State as shown hereunder towards the interest payable by that State

New South Wales	£ 917 411
Victoria	2 127,159
Queensland	1 096 235
South Australia	703,816
Western Australia	473,432
Tasmania	266,859
	£7 584,912

(*c*) Each State shall in each year during the same period of 58 years pay to the Commonwealth the excess over the amounts to be provided by the Commonwealth under the last preceding sub clause necessary to make up as they fall due the interest charges falling due in that year on the public debt of the State taken over by the Commonwealth as aforesaid and then unpaid and on any moneys borrowed by the Commonwealth on behalf of that State and then unpaid and after the expiration of the said period each State shall in each year pay to the Commonwealth as they fall due the whole of the interest charges on any debt then unpaid included in the public debt of that State taken over by the Commonwealth as aforesaid, and on any moneys borrowed by the Commonwealth on behalf of that State and then unpaid

(*d*) The method by which payments shall be made by a State under sub clause (*c*) of this clause shall be arranged from time to time between the Commonwealth and that State

(*e*) The rate of interest payable under sub clause (*c*) of this clause in respect of moneys borrowed by the Commonwealth on behalf of a State shall be the full rate of interest payable by the Commonwealth [illegible] the loan by which such moneys were borrowed or such other rate of interest as may be payable by the State to the Commonwealth under any Agreement made or to be made between the Commonwealth and that State in respect of such moneys and such interest shall be payable by the State for the full term of that loan

3 SINKING FUNDS

(*a*) A sinking fund at the rate of 7s 6d per annum for each £100 of the net public debts of the States existing on 30th June 1927, shall be established in the manner hereinafter set forth

(*b*) During the period of fifty eight years commencing on the 1st July, 1927, the Commonwealth shall pay from revenue annually a sinking fund contribution at the rate of 2s 6d. for each £100 of the net public debts of the States existing on 30th June, 1927, and each State (other than the State of New South Wales) shall in each year during the said period pay from revenue a sinking fund contribution at the rate of 5s for each £100 of the net public debt of such State existing on 30th June, 1927 The State of New South Wales during the period of fifty eight years commencing on the 1st July, 1928, shall in each year pay from revenue a sinking fund contribution at the rate of 5s for each £100 of the net public debt of that State existing on 30th June, 1927

PART III., CLAUSE 3—*continued.*

(c) Where in respect of any debt included in the gross Public Debt of a State existing at the 30th June, 1927, there is under laws or contracts existing at that date an obligation to provide a sinking fund at a rate in excess of 7s 6d per annum for each £100, any amount to be so provided in excess of 7s 6d per annum for each £100 shall be provided out of the National Debt Sinking Fund, established under the laws of the Commonwealth: Provided that if any law imposing such an obligation is repealed or is amended so as to reduce the rate of sinking fund to be provided the only amount (if any) to be provided out of the National Debt Sinking Fund pursuant to this sub-clause in respect of that debt shall as from the date of such repeal or amendment be the amount (if any) by which the reduced rate of sinking fund for the time being exceeds 7s 6d per annum for each £100.

(d) When a loan is issued for the conversion renewal or redemption of any debt of a State included in the gross Public Debt of that State existing on 30th June, 1927, the only sinking fund contributions to be made by the Commonwealth and that State in respect of the debt so converted renewed, or redeemed shall be sinking fund contributions at the same rate and for the same period and upon the same amount as if such debt had not been converted, renewed, or redeemed.

(e) Subject to sub-clauses (*h*) and (*j*) of this clause a sinking fund at the rate of 10s. per annum for each £100 of the amount of each new loan raised by a State or by the Commonwealth for and on behalf of a State after 30th June 1927, shall be established.

(*f*) Subject to sub-clauses (*h*) and (*j*) of this clause in each year during the period of fifty three years from the date of the raising after 30th June 1927 of any new loan by a State or by the Commonwealth for and on behalf of a State the Commonwealth and that State shall each pay from revenue a sinking fund contribution of a sum equal to 5s for each £100 of the amount of the new loan

Provided that the period of fifty three years during which the State of New South Wales shall make sinking fund contributions in respect of new loans raised in the financial year beginning on the 1st July 1927 shall commence on the 1st July, 1928

(*g*) For the purpose of the last two preceding sub-clauses a loan issued after the 30th June, 1927, to meet a revenue deficit which accrued on or before that date shall be deemed to be a new loan but a loan issued for the conversion, renewal or redemption of a debt shall not be deemed to be a new loan and where a loan is issued partly for the conversion, renewal or redemption of a debt and partly for other purposes so much only of the loan as has been issued for other purposes shall be deemed to be a new loan

(*h*) Where it is agreed between the Commonwealth and a State that a loan or any portion of a loan raised after 30th June 1927, and expended or to be expended upon wasting assets should be redeemed within a shorter period than fifty three years, the annual sinking fund contributions of the State in respect of that loan or the portion thereof, shall be increased to an amount which with the sinking fund contributions of the Commonwealth in respect of that loan or the portion thereof will provide for the redemption of that loan or the portion thereof within such shorter period All sinking fund contributions of the State in respect of that loan or the portion thereof shall cease on the expiration of the shorter period but the Commonwealth contributions in respect of that loan shall continue for the remainder of the period of fifty three years from the date of the raising of that loan and during such remainder of the period the State contributions to the sinking fund in respect of other loans of that State shall be reduced by the amount of the Commonwealth contributions during that remainder of the period in respect of such redeemed loan or the portion thereof For the purposes of this sub-clause the sinking fund contributions of the Commonwealth and the State shall be deemed to accumulate at the rate of 4½ per centum per annum compounded

(*i*) Where loan moneys have been advanced by a State under terms providing for the repayment of such moneys the State shall as and when such moneys are repaid pay such moneys either to the State Loan Fund or to the account or fund from which such moneys were advanced, or to the sinking fund and shall in addition make from revenue its sinking fund contributions in respect of the loan or loans from which the moneys so advanced were provided

Provided that when loan moneys have been advanced by a State to a Public or Local Authority or body constituted by the State or under the laws of the State and the Authority or body repays such moneys out of its revenue the State may out of moneys so repaid make its sinking fund contributions in respect of the loan moneys so advanced.

(*j*) In respect of any loan raised after the 30th June, 1927, by a State or by the Commonwealth for and on behalf of a State to meet a revenue deficit accruing after that date no sinking fund contribution shall be payable by the Commonwealth, but that State shall for a period sufficient to provide for the redemption of that loan pay

PART III, CLAUSE 3 *continued*

from revenue in each year during such period a sinking fund contribution at a rate of not less than 4 per centum of the amount of that loan For the purposes of this subclause the sinking fund contributions of the State shall be deemed to accumulate at the rate of 4½ per centum per annum compounded

(*k*) All sinking fund contributions to be made in pursuance of this part of this Agreement shall be debts payable to the National Debt Commission as follows

(i) As regards the net public debt of a State existing on 30th June 1927 by half yearly instalments on 30th September and 31st March in each financial year or on such other dates as may be agreed between the Commonwealth and that State

(ii) As regards loans raised after 30th June 1927 by equal instalments on the dates on which interest on such loans is payable or on such other dates as may be agreed upon between the Commonwealth and the State concerned

(*l*) Subject to the next succeeding subclause all moneys and securities standing to the credit of sinking funds redemption funds and funds of a liquid nature of a State existing on 30th June, 1929 shall forthwith be transferred by the States to the National Debt Commission Nothing in this subclause contained shall be deemed to limit the power of a State to cancel before 30th June 1929 any such securities

(*m*) Where the conditions relating to sinking funds redemption funds and funds of a like nature as aforesaid held by a State in trust or by trustees under statutory or contractual obligations preclude the transfer of those funds to the National Debt Commission, such funds shall remain under the control of the State or those trustees and the National Debt Commission will either directly or through the State concerned make all future payments to the State or to those trustees from the sinking fund

(*n*) The sinking funds to be established under this Agreement shall be controlled by the National Debt Commission The National Debt Commission may arrange with any State to act as its agent in connexion with payments due to bondholders

(*o*) Sinking fund contributions made under this Agreement in respect of the debts of a State and funds of that State transferred to the National Debt Commission under sub-clause (*l*) of this clause will not be accumulated but (subject to subclauses (*m*) and (*p*) of this clause) will be applied to the redemption of the public debts of that State and of loans raised by the Commonwealth for and on behalf of that State or to the purchase of securities issued in respect thereof

(*p*) If at any time it is deemed inexpedient by the National Debt Commission to apply sinking funds in the manner set forth in subclause (*c*) of this clause, such funds may be temporarily invested in any securities in which the National Debt Commission is from time to time by law authorized to invest moneys

(*q*) When a security issued in respect of a public debt of a State or of a loan raised by the Commonwealth for and on behalf of a State is repurchased or redeemed by the National Debt Commission such security shall be held

(i) if a repurchased security on the last day of September December, March or June next ensuing after the date of repurchase or on the date of maturity of the security whichever shall first occur and

(ii) if a redeemed security on the date of redemption

In addition to the sinking fund contributions otherwise payable in respect of that debt or loan the State concerned shall

(i) as from the date of cancellation of each security and for the full period during which the said sinking fund contributions are payable make from revenue a further sinking fund contribution at the rate of 4½ per centum per annum of the face value of the cancelled security and

(ii) also pay to the National Debt Commission interest on the face value of each repurchased security at the rate provided by the security from the last date preceding the repurchase upon which interest was payable under the terms of the security up to the date of cancellation of the security

4 TRANSFERRED PROPERTIES

It is agreed that all questions between the Commonwealth and the States relating to State properties transferred to the Commonwealth or acquired by the Commonwealth under section 85 of the Constitution shall be settled as follows —

The States will as from 1st July, 1929, and as between the Commonwealth and the States be completely free and discharged from all liability whether in respect of principal, interest or sinking fund, or otherwise, which liability shall be assumed by the Commonwealth in respect of so much of the public debts of the States bearing interest

PART III., CLAUSE 4—*continued.*

at the rate of 5 per centum per annum, taken over by the Commonwealth as aforesaid as amounts to the agreed value of transferred properties, namely, £10,924,323 apportioned to the several States as follows :—

New South Wales	£4,788,005
Victoria	2,302,862
Queensland	1,569,639
South Australia	1,035,631
Western Australia	736,432
Tasmania	500,754
Total	£10,924,323

The particular portion of the public debt of each State in respect of which the States shall become free and discharged from liability shall be determined by the Commonwealth.

Each State will issue to the Commonwealth freehold titles (or, if the laws of any State do not permit of the issue of freehold titles, then titles as near to freehold as the laws of that State will permit) for transferred properties consisting of land or interests in land in that State, and all liability of the Commonwealth to the State in respect of transferred properties shall as from the 1st July, 1929, be extinguished.

The provisions of clauses 2 and 3 of this Part of this Agreement shall not apply to the said amount of £10,924,323

PART IV MISCELLANEOUS.

1 EXPENSES OF LOAN FLOTATION

Each State shall repay to the Commonwealth all expenses incurred or payments made by the Commonwealth in the performance of this Agreement in relation to the State including the following expenses and payments

(i) *Loan flotation charges*,
(ii) Management charges,
(iii) Stamp duties on transfer of securities;
(iv) Commission on payment of interest,
(v) Expenses incurred in the conversion renewal redemption or consolidation of loans,
(vi) Exchange on transference of moneys.

Unless it is otherwise agreed between the Commonwealth and a State the Commonwealth will not do anything in connexion with a loan of that State existing on the 30th June, 1927, or raised thereafter pursuant to this Agreement which if done by that State would be a breach of any now existing agreement by that State with any Bank.

A certificate by the Auditor-General of the Commonwealth stating the amount to be repaid by a State to the Commonwealth and the matter in respect of which the repayment is to be made shall in the event of a dispute be conclusive as to the amount and matter stated

2 ALTERATION OF THE CONSTITUTION.

The Commonwealth will take the necessary action to submit to the Parliament of the Commonwealth and to the electors proposals for the alteration of the Constitution of the Commonwealth in the following form :—

"105A. (1) The Commonwealth may make agreements with the States with respect to the public debts of the States, including—

(*a*) the taking over of such debts by the Commonwealth ;
(*b*) the management of such debts ;
(*c*) the payment of interest and the provision and management of sinking funds in respect of such debts ;
(*d*) the consolidation, renewal, conversion, and redemption of such debts ;
(*e*) the indemnification of the Commonwealth by the States in respect of debts taken over by the Commonwealth ; and
(*f*) the borrowing of money by the States or by the Commonwealth or by the Commonwealth for the States.

(2) The Parliament may make laws for validating any such agreement made before the commencement of this section.

(3) The Parliament may make laws for the carrying out by the parties thereto of any such agreement.

PART IV, CLAUSE 2 *continued*

(4) Any such agreement may be varied or rescinded by the parties thereto

(5) Every such agreement and any such variation thereof shall be binding upon the Commonwealth and the States parties thereto notwithstanding anything contained in this Constitution or the Constitution of the several States or in any law of the Parliament of the Commonwealth or of any State

(6) The powers conferred by this section shall not be construed as being limited in any way by the provisions of section 105 of this Constitution

3 INDEMNITY

Each State agrees with the Commonwealth that it will by the faithful performance of its obligations under this Agreement indemnify the Commonwealth against all liabilities whatsoever in respect of the public debt of that State taken over by the Commonwealth as aforesaid (other than the liabilities of the Commonwealth under this Agreement to pay interest and to make sinking fund contributions and under clause 4 of Part III of this Agreement) and in respect of all loans of that State in respect of which this Agreement provides that sinking fund contributions shall be made

4 ACCOUNTS

Separate accounts shall be kept by the Commonwealth for each State in respect of Debt Interest and Sinking Funds

IN WITNESS whereof the Prime Minister of the Commonwealth of Australia and the Premiers of each of the States of New South Wales Victoria Queensland South Australia Western Australia and Tasmania have signed this Agreement respectively for and on behalf of the Commonwealth of Australia and of the said States

Signed by the Prime Minister of the Commonwealth of Australia for and on behalf of the said Commonwealth in the presence of
EARLE PAGE — S M BRUCE

Signed by the Premier of the State of New South Wales for and on behalf of the said State in the presence of
B S STEVENS — J R BAVIN

Signed by the Premier of the State of Victoria for and on behalf of the said State in the presence of
H A PITT — J HOGAN

Signed by the Premier of the State of Queensland for and on behalf of the said State in the presence of
J MULLAN — W McCORMACK

Signed by the Premier of the State of South Australia for and on behalf of the said State in the presence of
H JASSIE — R L BUTLER

Signed by the Premier of the State of Western Australia for and on behalf of the said State in the presence of—
GEO W SIMPSON — P COLLIER

Signed by the Premier of the State of Tasmania for and on behalf of the said State in the presence of
J ALLAN GUY — J A LYONS

TASMANIA SINKING FUND AGREEMENT.

(Made 11th September, 1928.)

AGREEMENT made the eleventh day of September One thousand nine hundred and twenty-eight BETWEEN the COMMONWEALTH OF AUSTRALIA (hereinafter called the 'Commonwealth') of the one part and THE STATE OF TASMANIA of the other part

WHEREAS an Agreement dated the twelfth day of December One thousand nine hundred and twenty-seven was made between the Commonwealth of the first part and the several States of New South Wales, Victoria, Queensland, South Australia, Western Australia and Tasmania respectively of the second, third, fourth, fifth, sixth and seventh parts a copy of which Agreement is set forth in the Schedule to the *Financial Agreement Act* 1928 of the Commonwealth of Australia and which Agreement is hereinafter referred to as the Financial Agreement

AND WHEREAS the Financial Agreement has been approved by the Parliaments of the Commonwealth and of each of the said several States

AND WHEREAS it is provided by paragraph (*l*) of Clause 3 of Part III of the Financial Agreement as follows –

> '(*l*) Subject to the next succeeding subclause all moneys and securities standing to the credit of sinking funds redemption funds and funds of a like nature of a State existing on 30th June 1929 shall forthwith be transferred by the States to the National Debt Commission Nothing in this subclause contained shall be deemed to limit the power of a State to cancel before 30th June, 1929, any such securities

AND WHEREAS on the first day of July 1928 there stood to the credit of the sinking fund of the State of Tasmania certain securities of the Commonwealth which the State of Tasmania desires to cancel

AND WHEREAS it has been agreed between the parties hereto that the said securities of the Commonwealth shall not be cancelled by disposal thereof by sale to the public but that such securities shall be handed by the State of Tasmania to the Commonwealth in reduction *pro tanto* of the debt of Three million nine hundred and forty-eight thousand six hundred and thirteen pounds (£3,948,613) due by the State of Tasmania to the Commonwealth as set forth in Clause 2 of Part I of the Financial Agreement

NOW THIS AGREEMENT WITNESSETH as follows

1 This Agreement shall have no force or effect and shall not be binding on either party unless and until it is approved by the Parliaments of the Commonwealth and of the State of Tasmania *

2 The State of Tasmania shall forthwith deliver to the Commonwealth the securities of the Commonwealth of the nominal value of One million one hundred and thirty-nine thousand eight hundred and sixty-three pounds three shillings and sixpence (£1,139,863 3s 6d) particulars of which securities are set forth in the First Schedule hereto and hereby as from the first day of July One thousand nine hundred and twenty-eight releases and discharges the Commonwealth from all liability in respect of the said securities

3 It is agreed that the value of the said securities as on the first day of July One thousand nine hundred and twenty-eight is One million one hundred and forty-two thousand three hundred and ninety-four pounds (£1,142,394)

4 The Commonwealth hereby as from the first day of July One thousand nine hundred and twenty-eight releases and discharges the State of Tasmania from liability for the total sum of One million one hundred and thirty-seven thousand seven hundred and twenty pounds (£1,137,720) particulars of which are set forth in the Second Schedule hereto, being portion of the said debt of Three million nine hundred and forty-eight thousand six hundred and thirteen pounds (£3,948,613) due by the State of Tasmania to the Commonwealth as set forth in Clause 2 of Part I of the Financial Agreement

5 It is agreed that the value of the portion of the debt hereby released and discharged as on the first day of July One thousand nine hundred and twenty-eight is One million one hundred and forty-two thousand three hundred and ninety-four pounds (£1,142,394)

* NOTE This Agreement was approved by the Parliament of the Commonwealth by the *Tasmania Sinking Fund Agreement Act* 1928 (No 49 1928) and by the Parliament of the State of Tasmania by *The Commonwealth and State Public Debt Redemption Agreement Act* 1928 (19 Geo V, No. 16)

6. Nothing herein contained shall be construed as affecting any right or obligation of either party hereto under the Financial Agreement.

IN WITNESS whereof the Commonwealth of Australia and the State of Tasmania have executed these presents.

Signed by the Prime Minister of the Commonwealth of Australia for and on behalf of the said Commonwealth in the presence of
G. B. COOKE
Private Secretary
to Prime Minister
} S. M. BRUCE

Signed by the Premier of the State of Tasmania for and on behalf of the said State in the presence of—
P. J. STRUTT
Under-Treasurer
} J. C. McPHEE

FIRST SCHEDULE

SECURITIES OF THE COMMONWEALTH TO BE DELIVERED BY THE STATE OF TASMANIA TO THE COMMONWEALTH

Description of Security: Date of Maturity	Rate of Interest	Security Redeemable in	Nominal Value of Securities to be delivered to the Commonwealth
	%		£ s. d.
15th September, 1928	5	Australia	49 010 0 0
31st May, 1929	6	Australia	1,300 0 0
15th March, 1930	6	Australia	16,700 0 0
15th December, 1930	6	Australia	333,950 0 0
15th December, 1931	5½	Australia	850 0 0
15th February, 1933	5¼	Australia	1,300 0 0
31st May, 1934	6	Australia	30,233 3 6
15th December, 1936	5¼	Australia	11,800 0 0
15th December, 1936	5⅜	Australia	92,300 0 0
15th February, 1938	5¼	Australia	104,600 0 0
15th December, 1941	5¼	Australia	5,000 0 0
15th December, 1941	5½	Australia	83,700 0 0
15th February, 1943	5¼	Australia	359,600 0 0
15th September, 1948	5	Australia	19,520 0 0
		Total	£1,139,863 3 6

SECOND SCHEDULE

LIABILITIES OF THE STATE OF TASMANIA TO THE COMMONWEALTH TO BE DISCHARGED.

Description of Security: Date of Maturity.	Rate of Interest	Security Redeemable in	Nominal Value of Securities to be cancelled
	%		£ s. d.
15th March, 1930	6	Australia	282,970 0 0
15th December, 1931	5¼	Australia	120,940 0 0
15th February, 1933	5¼	Australia	124,000 0 0
15th March, 1935	6	Australia	120,460 0 0
15th December, 1936	5¼	Australia	45,540 0 0
15th February, 1938	5¼	Australia	43,000 0 0
15th December, 1941	5¼	Australia	210,140 0 0
15th February, 1943	5¼	Australia	128,700 0 0
1st July, 1945–75	5	London	52,970 0 0
		Total	£1,137,720 0 0

DEBT CONVERSION AGREEMENT.

(Made 21st July, 1931.)

AGREEMENT made the twenty-first day of July One thousand nine hundred and thirty one BETWEEN THE COMMONWEALTH OF AUSTRALIA (in this Agreement called the Commonwealth) of the first part THE STATE OF NEW SOUTH WALES of the second part, THE STATE OF VICTORIA of the third part THE STATE OF QUEENSLAND of the fourth part, THE STATE OF SOUTH AUSTRALIA of the fifth part THE STATE OF WESTERN AUSTRALIA of the sixth part, and THE STATE OF TASMANIA of the seventh part (each of the parties of the second, third fourth fifth sixth and seventh parts being in this Agreement referred to as a State, and the expression "the States" in this Agreement meaning where the context so permits or requires all of such parties)

WHEREAS by section 105A of the Constitution it is provided that the Commonwealth may make agreements with the States with respect to the public debts of the States, including (*inter alia*) the consolidation renewal conversion and redemption of such debts

AND WHEREAS at a Conference between Ministers of the Commonwealth and Ministers of the States convened in Melbourne on the twenty fifth day of May 1931, it was resolved, as part of a plan for establishing the financial stability of the Commonwealth and of the States, that a conversion should be arranged of the internal public debts of the Commonwealth and of the States and the following conditions were provisionally agreed upon as recommendations by the Conference to the Australian Loan Council, namely —

General Conditions

1 Holders of all existing securities to be invited to convert their holdings into new stock conversion to apply to all securities the holders of which do not dissent as prescribed by Commonwealth law

2 On conversion all existing securities to be subject to a general reduction of 22½ per cent in the interest yield provided that holders of 3 3½ and 3½ per cent stocks who acquired such securities prior to 4th August 1914 shall not have their interest reduced below 3 per cent

3 New securities to be restricted to three flat rates of interest viz., 4, 3⅞, and 3 per cent., and to be spread over ten (10) fixed maturity dates as follows, subject to the Government having the right to redeem in whole or in part at any time after 31st December 1950 —

Period Years	*Rate of Interest per cent*
7	4 and 3
10	4
13	4 and 3
16	4 and 3⅞
19	4
22	4
24	4
26	4
28	4
30	4 and 3

4 The new securities to be Commonwealth securities, and to be in the form of bearer-bonds, debentures, or inscribed stock, &c., as at present

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NOTE This Agreement was approved by the Parliaments of the Commonwealth and of the States by the following Acts

Commonwealth Debt Conversion Agreement Act 1931 (No. 14 1931)
New South Wales Debt Conversion Agreement Act 1931 (No 27, 1931)
Victoria Debt Conversion Agreement Act 1931 (No 4953 1931)
Queensland The Debt Conversion Agreement Act of 1931 (22 Geo V No 2) as amended by the Debt Conversion Agreement Amendment Act of 1931 (22 Geo V No 3)
South Australia Financial Emergency Act, 1931 (No 2002 1931)
Western Australia Debt Conversion Agreement Act 1931 (No 6 1931)
Tasmania The Debt Conversion Agreement Act 1931 (22 Geo V, No 1).

5. The equivalent amount of new stock to be determined by actuarial valuation after taking into account the interest rate and date of maturity of each existing security, and after allowing for the general reduction of 22½ per cent in the interest yield

6. Existing securities (£450,000,000) now bearing interest at 5½ per cent and over to be converted into 4 per cent. at a premium As a general rule each holding to be spread equally over the ten maturity dates, but special arrangements to be made to consolidate small holdings on conversion

7. Existing securities (£45,000,000) now bearing interest at 5 per cent to be converted, at option of holder, into 3½ per cent stock at par, maturing in sixteen years, or 4 per cent stock (at a discount)

8. Existing securities (£61,000,000) now bearing interest at less than 5 per cent to be converted, at option of holder, into 3 per cent stock maturing in seven years and thirteen years (at a premium), or into 4 per cent stock (at a discount)

9. To facilitate the issue of new securities all fractions below £10 to be paid off in cash, subject to holders being entitled to contribute cash to make up the next higher £10

10 The interest on the new securities to be free from the present Commonwealth super tax of 7½ per cent, and from any further taxation which may be imposed by the Commonwealth or by any State, but to be subject to other existing Commonwealth and State taxes

11 Where overseas trade money has been temporarily invested in short term securities, because of exchange difficulties the holders to be given the right to convert into a short term new security, subject to other conditions similar to the main conversion

Special Conditions Applicable to Tax Free Securities

12 Tax free securities with definite dates of maturity

(i) Holders to be invited to convert into new securities subject to the general reduction of 22½ per cent in the interest yield, with the proviso set out in clause 2 above

(ii) Holders of tax free securities who so convert to be given new securities at the reduced rates, such securities to be tax free only until the existing date of maturity

(iii) The new securities issued to replace the tax free securities maturing in 1932, 1933, and 1934 to be re-converted on maturity dates into 4 per cent securities maturing in 1944, on the same basis as other conversions into the new 4 per cent issue

(iv) The new securities to replace all other tax free securities to retain their present maturity dates

13 Tax free securities which are "Irredeemable," "Redeemable at option of Government, &c

Holders to be invited to convert into new securities subject to the general reduction of 22½ per cent in the interest yield with the proviso set out in clause 2 above, the general conditions attaching to the new securities to be the same as those attaching to the original securities

Government Securities Held by State Savings Banks

14 Dates of maturities of securities held by the State savings Banks to stand if so desired by the Treasurer of the State concerned, on same conditions as conversion issue

Treasury Bills

15. The rate of interest on Treasury Bills taken up by the banks in Australia to be reduced to 4 per cent., and all other questions in relation to the Bills to be settled by the Loan Council in consultation with the banks

Loan Council

16 The terms herein set out to be regarded as recommendations by the Conference to the Loan Council, which it is to be understood is at liberty to modify any details of the plan, and to settle all details not included above

AND WHEREAS the said conditions with certain modifications have been embodied in a Bill for an Act to be known as the *Commonwealth Debt Conversion Act* 1931 which has been passed by both Houses of the Federal Parliament and is ready for presentation to the Governor-General for the Royal assent and is hereinafter referred to as the said Act

AND WHEREAS there have been incorporated in the said Act additional provisions deemed to be convenient for carrying out the said conditions as so modified as aforesaid:

NOW THIS AGREEMENT WITNESSETH

1 This Agreement shall have full force and effect, and shall be binding on all the parties when it is approved by the Parliaments of the Commonwealth and of the States *

2 The Commonwealth is authorized to arrange and effect a conversion, on the basis of a twenty two and a half per centum reduction of interest, in accordance with the terms and conditions of sections three, eight, and ten to twenty two inclusive, of the said Act, of all public debts of the States the liability for which has been assumed by the Commonwealth under the Financial Agreement hereinafter mentioned and the interest and principal of which are payable in Australia, and of all public debts of the Commonwealth (including borrowings by the Commonwealth for or on behalf of a State under the said Financial Agreement) the interest and principal of which are payable in Australia. The said sections of the said Act shall be binding upon the parties hereto as part of this Agreement

3 The Commonwealth will take the necessary action to submit to the Federal Parliament any legislation necessary to carry out or give effect to this Agreement

4 So far as the provisions of this Agreement may not be in accordance with any provisions of the Financial Agreement between the parties hereto dated the 12th day of December 1927, the provisions of this Agreement shall prevail

5 Subject to the last preceding clause, the provisions of the said Financial Agreement, and the undertakings and obligations of the Commonwealth and of the States therein contained shall apply to the public debts after conversion in the same manner as they applied before conversion

Signed by the Prime Minister of the Commonwealth of Australia for and on behalf of the said Commonwealth in the presence of—
G L CAMPBELL — J H SCULLIN

Signed by the Premier of the State of New South Wales for and on behalf of the said State in the presence of
C R CHAPMAN — JOHN T LANG

Signed by the Premier of the State of Victoria for and on behalf of the said State in the presence of
H A PITT — I J HOGAN

Signed by the Premier of the State of Queensland for and on behalf of the said State in the presence of
G W WATSON — A E MOORE

Signed by the Premier of the State of South Australia for and on behalf of the said State in the presence of
S R WHITFORD — LIONEL L HILL

Signed by the Premier of the State of Western Australia for and on behalf of the said State in the presence of—
L E SHAPCOTT, J P. — JAMES MITCHELL.

Signed by the Premier of the State of Tasmania for and on behalf of the said State in the presence of—
E PARKES — J C McPHEE

* NOTE —See footnote, *supra*, p 182

DEBT CONVERSION AGREEMENT (No 2)

(Made 22nd October, 1931)

AGREEMENT made the twenty second day of October One thousand nine hundred and thirty-one BETWEEN THE COMMONWEALTH OF AUSTRALIA (in this agreement called "the Commonwealth") of the first part THE STATE OF NEW SOUTH WALES of the second part THE STATE OF VICTORIA of the third part THE STATE OF QUEENSLAND of the fourth part THE STATE OF SOUTH AUSTRALIA of the fifth part THE STATE OF WESTERN AUSTRALIA of the sixth part and THE STATE OF TASMANIA of the seventh part (the expression "the States" in this agreement meaning where the context so permits or requires all of the parties of the second third, fourth fifth, sixth and seventh parts)

WHEREAS by section 105A of the Constitution it is provided that the Commonwealth may make agreements with the States with respect to the public debts of the States, including (*inter alia*) the consolidation renewal, conversion and redemption of such debts

AND WHEREAS by an Agreement made the twenty first day of July One thousand nine hundred and thirty one between the parties hereto the Commonwealth was authorized to arrange and effect a conversion on the basis of a £22½ per cent reduction of interest, in accordance with the terms and conditions now contained in sections 3, 8 and 10 to 22 inclusive of the *Commonwealth Debt Conversion Act* 1931 (hereinafter called "the said Act") of all public debts of the States the liability for which has been assumed by the Commonwealth under the Financial Agreement between the parties hereto dated the twelfth day of *December* One *thousand nine hundred and twenty seven* and the principal and interest of which are payable in Australia and of all public debts of the Commonwealth (including borrowings by the Commonwealth for or on behalf of a State under the said Financial Agreement) the interest and principal of which are payable in Australia

AND WHEREAS by the said Act provision has been made for the conversion into new securities of existing securities comprised in the said public debts the holders of which did not, within the time and in the manner prescribed signify dissent from the conversion

AND WHEREAS approximately ninety seven per centum of existing securities have been converted under the said Act and it is expedient that the remainder of the existing securities should be converted on the same terms and conditions

NOW THIS AGREEMENT WITNESSETH

1 THIS agreement shall have full force and effect and shall be binding on all the parties, when it is approved by the Parliaments of the Commonwealth and of the States *

2 IN this agreement the terms existing securities and new securities have the same meaning as in the said Act

3 NOTWITHSTANDING anything in the above recited Debt Conversion Agreement or in the said Act contained, every holder of existing securities which have not been converted into new securities in accordance with the provisions of the said Act shall, notwithstanding that any holder of those existing securities may have signified or may signify dissent, be deemed to have made an application in accordance with section 9 of the said Act for their conversion into new securities and they shall be deemed to be so converted accordingly

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* NOTE.—This Agreement was approved by the Parliaments of the Commonwealth and of the States by the following Acts—

Commonwealth Debt Conversion Agreement Act (No. 2) 1931 (No. 5 1931)
New South Wales Debt Conversion Agreement (No. 2) Act 1931 (No. 60 1931)
Victoria Debt Conversion Agreement Act 1931 (No. 2) (No. 4066) 1931)
Queensland The Debt Conversion (Further Arrangements) Act of 1931 (22 Geo. V. No. 29)
South Australia Public Debt Conversion Agreement (No. 2) Act 1931 (No. 2044 1931)
Western Australia Debt Conversion Agreement Act (No. 2) 1931 (No. 46 1931)
Tasmania The Debt Conversion Agreement Act (No. 2) 1931 (22 Geo. V. No. 34)

PROVIDED that nothing in this clause shall apply to Commonwealth Treasury Bills issued to a Bank in Australia with the approval of the Australian Loan Council or to securities issued with the like approval to such a Bank in exchange for such Bills.

4 THE Government of the Commonwealth will take the necessary action to submit to the Federal Parliament any legislation necessary to carry out and give effect to this agreement.

5. So far as this agreement may not be in accordance with the provisions of the said Financial Agreement the provisions of this agreement shall prevail

6 SUBJECT to the last preceding clause, the provisions of the said Financial Agreement and the undertakings and obligations of the Commonwealth and of the States therein contained shall apply to the public debts after conversion in pursuance of clause 3 of this agreement in the same manner as they applied before such conversion.

SIGNED by the Prime Minister of the Commonwealth of Australia for and on behalf of the said Commonwealth in the presence of
F STRAHAN — J. H. SCULLIN

SIGNED by the Premier of the State of New South Wales for and on behalf of the said State in the presence of
C R CHAPMAN — JOHN T. LANG

SIGNED by the Premier of the State of Victoria for and on behalf of the said State in the presence of -
C C. GALE — E J. HOGAN

SIGNED by the Premier of the State of Queensland for and on behalf of the said State in the presence of
G. W. WATSON — A E MOORE

SIGNED by the Premier of the State of South Australia for and on behalf of the said State in the presence of
M A. F PEARCE — LIONEL L HILL

SIGNED by the Premier of the State of Western Australia for and on behalf of the said State in the presence of
L. E SHAPCOTT, J P. — JAMES MITCHELL

SIGNED by the Premier of the State of Tasmania for and on behalf of the said State in the presence of—
E. PARKES — J. C. McPHEE

AGREEMENT RELATING TO SOLDIER SETTLEMENT LOANS.

(Made 3rd July 1934.)

AGREEMENT made the third day of July One thousand nine hundred and thirty four BETWEEN THE COMMONWEALTH OF AUSTRALIA (in this Agreement called the Commonwealth") of the first part THE STATE OF NEW SOUTH WALES of the second part THE STATE OF VICTORIA of the third part THE STATE OF QUEENSLAND of the fourth part THE STATE OF SOUTH AUSTRALIA of the fifth part THE STATE OF WESTERN AUSTRALIA of the sixth part and THE STATE OF TASMANIA of the seventh part (each of the parties of the second third fourth fifth sixth and seventh parts being in this Agreement referred to as a "State" and the expression "the States" hereinafter used meaning where the context so permits or requires all of such parties)

WHEREAS this Agreement is supplemental to an Agreement (hereinafter referred to as the "Financial Agreement") made the twelfth day of December One thousand nine hundred and twenty seven between the same parties as are parties hereto with respect to the public debts of the States including

(*a*) the taking over of such debts by the Commonwealth and
(*b*) the payment of interest and the provision of Sinking Funds in respect of such debts

which Agreement has been approved by the Parliaments of the Commonwealth and of the States

AND WHEREAS the Commonwealth has lent to each of the States certain sums for the purposes of settling on the land returned soldiers and their dependants and other persons being settlers as defined in this Agreement and has received from each of the States certain sums in repayment in part of the said sums lent as aforesaid particulars of the sums so lent and so repaid being set forth in the Schedule hereto

AND WHEREAS the balances of the said several sums lent by the Commonwealth to each State after deducting from such sums respectively the said several sums repaid by that State to the Commonwealth are included in the amount of the net public debt of that State existing on 30th June 1927 as set forth in the said Financial Agreement

AND WHEREAS the Commonwealth and the States have agreed pursuant to section 105A of the Commonwealth Constitution that the provisions hereinafter contained shall apply to the aforesaid portion of the said public debt of each State and that the Financial Agreement as altered by the two several Agreements made the 21st July 1931 and the 22nd October 1931 between the parties hereto shall be varied accordingly

NOW IT IS HEREBY AGREED AS follows

1 THIS AGREEMENT shall have no force or effect and shall not be binding on any party unless and until it is authorized or approved by the Parliaments of the Commonwealth and of the States *

---

* NOTE This Agreement was authorized or approved by the Parliaments of the Commonwealth and of the States by the following Acts and in the terms indicated

Commonwealth Soldier Settlement Loans (Financial Agreement) Act 1935 (No. 26 1935) Agreement approved
New South Wales Financial Agreement (Returned Soldiers Settlement) Ratification Act 1935 (No. 1 1935) Agreement ratified authorized and approved
Victoria Commonwealth and States Financial Agreement Act 1934 (No. 4246 1934) Agreement authorized and approved
Queensland The Commonwealth and States Soldier Settlement Agreement and Financial Agreement Amendment Approval Act of 1934 (25 Geo. V. No. 13) Agreement approved adopted authorized ratified and confirmed
South Australia Supplementary Financial Agreement (Soldier Settlement Loans) Act 1934 (No. 2178, 1934) Agreement ratified and approved
Western Australia Soldier Land Settlement Act 1934 (No. 8 1934) Agreement approved and ratified
Tasmania Financial Agreement (Soldier Settlement) Act 1934 (25 Geo. V. No. 17) Agreement approved

2. In this Agreement—

(a) Any person who was at any time after the fourth day of August One thousand nine hundred and fourteen and before the thirty-first day of August One thousand nine hundred and twenty-one -

(i) a member of the Naval or Military Forces enlisted or appointed for or employed on active service outside Australia or employed in a ship of war, or

(ii) a member of the Army Medical Corps Nursing service accepted or appointed by the Director-General of Medical Services for services outside Australia; or

(iii) serving in the Naval or Military Forces of any part of the King's Dominions other than the Commonwealth on proof to the satisfaction of the State concerned that he had before his enlistment or appointment for service resided in the Commonwealth; or

(iv) a member of the Army Medical Corps Nursing service of any part of the King's Dominions other than the Commonwealth on proof to the satisfaction of the State concerned that she had before her acceptance by or appointment to that service resided in Australia;

shall be deemed to be a member of the Forces within the meaning of this Agreement;

(b) "Dependant" means a widow or mother or child (including an ex-nuptial child) of a deceased member of the Forces who was wholly or in part dependent upon the earnings of or upon the member of the Forces at any time during the period of twelve months prior to his becoming a member of the Forces;

(c) "Munition Worker" means a person who during the continuance of the war between His Majesty the King and the German Emperor and between His Majesty the King and the Emperor of Austria King of Hungary—

(i) entered into an agreement with the Commonwealth or the Minister of State for Defence to proceed to Great Britain for the purpose of—

(1) engaging in the work of producing munitions for the Imperial Government or otherwise, or

(2) serving under the Imperial Government in the Ministry of Munitions, and

(ii) engaged or served as aforesaid and whose agreement with the Commonwealth or the Minister of State for Defence was not determined by reason of his failure to observe and perform in all respects the terms and conditions contained in the Agreement and on his part to be observed and performed or by reason of his dismissal from any work in Great Britain during the continuance of the Agreement because of any conduct of the worker which in the opinion of the said Minister was such as to justify the determination of the Agreement;

(d) "War Worker" means a person who during the continuance of the war between His Majesty the King and the German Emperor and between His Majesty the King and the Emperor of Austria King of Hungary entered into an agreement with the Commonwealth or the Minister of State for Defence to Great Britain for the purpose of engaging in work as a labourer fettler or navvy for the Imperial Government or otherwise and engaged in such work and whose agreement with the Commonwealth or the Minister of State for Defence was not determined by reason of his failure to observe and perform any term or condition contained in the Agreement and on his part to be observed and performed or by reason of his dismissal from any work in Great Britain during the continuance of the Agreement because of any conduct of the worker which in the opinion of the said Minister was such as to justify the determination of the Agreement;

(e) "Settler" means a person approved by a State as suitable for settlement upon the land in that State and who was at any time after the fourth day of August One thousand nine hundred and fourteen and before the thirty-first day of August One thousand nine hundred and twenty-one—

(i) a member of the Forces; or

(ii) a munition worker; or

(iii) a war worker; or

who is a dependant, and includes,

(1) any other person who was a soldier of the Imperial Reserve Forces called up for active service during the war between His Majesty the King and the German Emperor and between His Majesty the King and the Emperor of Austria King of Hungary, and

(2) any other person who served during the said war in the Naval or Military Forces of any part of the King's Dominions other than the Commonwealth on active service outside that Dominion, and who was settled on the land by that State or lodged with that State an application for land prior to the thirtieth day of October One thousand nine hundred and twenty

(*f*) "Home maintenance" means such amount as may be worked by an industrious settler with under average conditions and circumstances returns sufficient to meet his commitments to the State and to maintain himself and family in reasonable comfort.

3 Each State acknowledges that it has received from the Commonwealth for the purpose of settling on the land returned soldiers and their dependants and other persons being settlers as defined in this Agreement the several sums set forth with respect to that State in column two of the Schedule hereto.

4 The Commonwealth shall be entitled to have received from each State in part repayment of the said moneys paid to that State the several sums set forth with respect to that State in column 3 of the said Schedule.

5 The Commonwealth acknowledges to have received from each State interest up to the first day of October One thousand nine hundred and twenty-six on the several sums set forth with respect to that State in column 2 of the Schedule hereto (being the balances of those several sums set forth with respect to that State in column 2 of the said Schedule after deducting from each such amount the several sums set forth with respect to that State in column 3 of the said Schedule) and on the sums set forth in column 3 up to the date of the repayment of the amount set opposite thereto in column 3 of the said Schedule opposite such sums respectively.

6 The Commonwealth agrees to write off as on the first day of October One thousand nine hundred and twenty-six the indebtedness of each State in respect of the several sums set forth with respect to that State in column 4 of the Schedule hereto by the several sums set forth with respect to that State in column 5 of the said Schedule.

7 Each State agrees to complete as far as practicable the satisfactory settlement of those persons being settlers and in this Agreement who are now on the land in that State particularly with respect to the provision of home maintenance areas.

8 In addition to the relief granted by Clause 6 the Commonwealth agrees to write off and reduce as at the thirtieth day of June One thousand nine hundred and twenty-seven the indebtedness of each State in respect of the several sums set forth with respect to that State in column 4 of the Schedule hereto by the several further sums set forth with respect to that State in column 7 of the said Schedule and the Commonwealth acknowledges that from the thirtieth day of June 1927 the sums set forth in column 8 of the said Schedule with respect to each State are the only amounts owing by that State in respect of the sums set out with respect to that State in column 2 of the said Schedule.

9 Each State acknowledges

(*a*) That after its indebtedness to the Commonwealth in respect of the several sums set forth with respect to that State in column 4 of the Schedule hereto has been written off and reduced by the several sums set forth with respect to that State in column 5 of the said Schedule as mentioned in Clause 6 it will then (but without prejudice to Clause 8) be indebted to the Commonwealth in the several sums set forth with respect to that State in column 6 of the said Schedule, and

(*b*) That after its indebtedness to the Commonwealth in respect of the several sums set forth with respect to that State in column 4 of the Schedule hereto has been written off and reduced by the several further sums set forth with respect to that State in column 7 of the said Schedule as mentioned in Clause 8 it will then be indebted to the Commonwealth in the several sums set forth with respect to that State in Column 8 of the said Schedule.

10 THE COMMONWEALTH acknowledges that each State has paid to the Commonwealth—

(*a*) From the first day of October 1925 to the thirtieth day of June 1927 interest on the amount for the time being unrepaid of each of the several sums set forth with respect to that State in column 6 of the Schedule hereto, and

(*b*) From the first day of July 1927 to the thirty first day of December 1930 interest on the amount for the time being unrepaid of each of the several sums set forth with respect to that State in column 8 of the Schedule hereto

at the rates of interest per annum set forth in column 1 of the said Schedule opposite the said sums respectively and

(*c*) From the first day of January One thousand nine hundred and thirty one to the thirty first day of July One thousand nine hundred and thirty one interest on the amount for the time being unrepaid of each of the several sums set forth with respect to that State in column 5 of the Schedule hereto at the rate of five pounds per centum per annum in lieu of the interest at the rates set forth in column 1 of the said Schedule opposite the said sums respectively, and

(*d*) From the first day of August One thousand nine hundred and thirty one to the first day of July One thousand nine hundred and thirty three interest on the amount for the time being unrepaid of each of the several sums set forth with respect to that State in column 5 of the Schedule hereto at the rate of four pounds per centum per annum in lieu of the interest at the rates set forth in column 1 of the said Schedule opposite the said sums respectively.

11 EACH STATE acknowledges that for the period of five years from the date of payment of each instalment of the moneys set forth with respect to that State in column 2 of the Schedule hereto the Commonwealth has made to that State a rebate of interest equal to two and one half per centum (2½%) per annum calculated on the full amount of the instalment

12 EACH STATE (other than the State of Queensland) acknowledges that the Commonwealth has allowed to that State interest at the rate of two and one half per centum (2½%) per annum for the period of five years on such amount of the bonds of that State issued by that State for the purpose of placing settlers on the land as is set forth hereunder with respect to that State namely

	£	*s*	*d*
New South Wales	348,900	0	0
Victoria	2,199,631	19	3
South Australia	194,827	0	10
Western Australia	106,603	0	0
Tasmania	11,936	8	1

13 On advances made by a State out of the moneys specified with respect to that State in column 2 of the said Schedule to settlers as defined in this Agreement for the purpose of effecting improvements on the land or for purchasing implements stock and things necessary for the successful cultivation of the land the settlers shall pay to the State interest—

(*a*) for the period commencing on the 1st July One thousand nine hundred and twenty five and ending on the thirty first day of July One thousand nine hundred and thirty-one at a reasonable rate not exceeding 3½ per centum in the first year and not exceeding in any subsequent year 3½ per centum plus ½ per centum in respect of each subsequent year after the first year but not exceeding in any case the full rate of interest payable by the State to the Commonwealth upon the money lent plus working expenses, and

(*b*) on and after the first day of August One thousand nine hundred and thirty-one at any rate but not exceeding in any case the rate of five per centum per annum

14. On the principal moneys owing by a settler to a State in respect of land purchased or resumed by that State and paid for out of the moneys specified with respect to that State in column 2 of the Schedule hereto the settler shall pay to the State interest—

(*a*) for the period commencing on the first day of July One thousand nine hundred and twenty five and ending on the thirty first day of July One thousand nine hundred and thirty one at a rate not exceeding the rate of interest payable by the State to the Commonwealth upon the money lent plus working expenses, and

(*b*) on and after the first day of August One thousand nine hundred and thirty one at any rate but not exceeding in any case the rate of five per centum per annum

15 It is agreed that the indebtedness of each State to the Commonwealth under this Agreement as set forth in column 8 of the Schedule hereto shall be adjusted as follows —

As from the first day of July One thousand nine hundred and thirty three and as between the Commonwealth and each State each State will be free and discharged from all liability for repayment of the moneys lent by the Commonwealth as hereinbefore mentioned and in lieu of such liability will assume liability in respect of so much of the public debt represented by Australian Consolidated Inscribed Stock and Australian Consolidated Treasury Bonds bearing interest at the rate of four per centum per annum as is equivalent to the amount of the said indebtedness of the State to the Commonwealth and to the same extent as if the amount of such Australian Consolidated Inscribed Stock and Australian Consolidated Treasury Bonds were public debt of the State existing on 30th June 1927 and taken over by the Commonwealth under Part III of the Financial Agreement and the Commonwealth will as *from the first day of July One thousand nine* hundred and thirty three assume in respect of the said amount of such Australian Consolidated Inscribed Stock and Australian Consolidated Treasury Bonds the like liabilities and to the same extent as if such amount of such Australian Consolidated Inscribed Stock and Australian Consolidated Treasury Bonds were included in and part of (but not additional to) the amounts set forth in the Financial Agreement as the public debt of the State existing on the thirtieth day of June One thousand nine hundred and twenty seven and taken over by the Commonwealth under Part III of the Financial Agreement and the Australian Consolidated Inscribed Stock and Australian Consolidated Treasury Bonds shall be [illegible] repaid rateably equally among the several dates of maturity specified in Section 19 of the Commonwealth Debt Conversion Act 1931

16 *Nothing in this Agreement contained* shall affect or imply the obligations of any State to the Commonwealth or of the Commonwealth to any State in respect of debts of that State to the Commonwealth included in the amount of the Net Public Debt of a State existing on 30th June 1927 as set forth in the Financial Agreement and not included in the sums set forth in the Schedule to this Agreement

17 Any notice or communication to be given or made by the Commonwealth to a State under this Agreement shall be deemed to have been duly given or made if signed by or on behalf of the Treasurer of the Commonwealth and sent by prepaid post addressed to the Treasurer of that State and any notice or communication to be given or made by a State to the Commonwealth under this Agreement shall be deemed to have been duly given or made if signed by or on behalf of the Treasurer of that State and sent by prepaid post addressed to the Treasurer of the Commonwealth

18 And whereas certain doubts have been raised concerning the interpretation of sub-clause (*a*) of Clause 3 of Part I of the Financial Agreement in relation to the appointment of Ministers of State to represent the Commonwealth and the States as members of the Loan Council and it is desirable to remove such doubts

Now it is agreed that Clause 3 of Part I of the Financial Agreement is hereby varied by omitting sub-clause (*a*) and inserting in its stead the following sub-clause —

There shall be an Australian Loan Council which shall consist of one representative of the Commonwealth who shall be —

(*a*) the Prime Minister of the Commonwealth, or

(*b*) in the absence of the Prime Minister at any time from a meeting of the Council—

a Minister nominated in writing by the Prime Minister, and one representative of each State who shall be—

(*a*) the Premier of that State, or

(*b*) in the absence of the Premier at any time from a meeting of the Council—a Minister nominated in writing by the Premier of that State

Provided that if in the opinion of the Prime Minister or of any Premier of a State, special circumstances exist at any time which make it desirable so to do, the Prime Minister or the Premier as the case may be may nominate some other person to represent the Commonwealth or the State (as the case may be) as a member of the Loan Council

Any nomination of a representative of a State shall be notified in writing by the Premier of the State to the Prime Minister

AND IT IS FURTHER AGREED that the Financial Agreement shall be read and construed as if the amendments to Clause 3 of Part I. of that Agreement insofar as they authorize the Prime Minister and the Premier of a State to respectively represent the Commonwealth or a State on the Australian Loan Council had been incorporated in that Agreement at the date of the making thereof

IN WITNESS whereof the parties hereto have executed this Agreement the day and year first hereto written

SIGNED by the Treasurer of the Commonwealth for and on behalf of the Commonwealth in the presence of
E J McKENNA } J A LYONS

SIGNED by the Treasurer of the State of NEW SOUTH WALES for and on behalf of the State in the presence of—
C R CHAPMAN } B S STEVENS

SIGNED by the Treasurer of the State of Victoria for and on behalf of the State in the presence of
H A PITT } STANLEY S ARGYLE

SIGNED by the Acting Treasurer of the State of QUEENSLAND for and on behalf of the State in the presence of—
H STANLEY } P PEASE

SIGNED by the Treasurer of the State of SOUTH AUSTRALIA for and on behalf of the State in the presence of—
R R SUCKLEY } R L BUTLER

SIGNED by the Treasurer of the State of WESTERN AUSTRALIA for and on behalf of the State in the presence of—
A BERKELEY } P COLLIER

SIGNED by the Treasurer of the State of TASMANIA for and on behalf of the State in the presence of—
P J STRUTT } E DWYER GRAY

THE SCHEDULE.

SOLDIER LAND SETTLEMENT.

Column 1. Rate of Interest per annum applicable to the sums shown opposite thereto.	Column 2. Sums lent to the State by the Commonwealth to 30th June 1925.	Column 3. Repayment by the State to the Commonwealth to 30th June 1925	Column 4. Balances being indebtedness of the State to the Commonwealth at 30th June 1925	Column 5. Amount to be written off as at 1st October 1925 divided in proportion to the sums owing at the various rates of interest	Column 6 Reduced indebtedness of the State to the Commonwealth after 1st October 1925	Column 7. Amount to be written off as at 30th June 1927 divided in proportion to the sums owing at the various rates of interest	Column 8. Reduced indebtedness of the State to the Commonwealth after 30th June 1927.
£ s. d.	£ s. d.	£ s. d.	£ s. d.	£ s. d.	£ s. d.	£ s. d.	£ s. d.
NEW SOUTH WALES.							
4 14 3	20,000 0 0	20,000 0 0		..			..
5 5 3	85,624 13 9	219 10 9	85,405 3 0	11,670 14 5	73,734 8 7	8,140 19 1	65,593 9 6
5 6 11	1,874,411 8 2		1,874,411 8 2	256,140 13 7	1,618,270 14 7	178,671 17 9	1,439,598 16 10
6 7 0	4,285,099 0 0		4,285,099 0 0	585,564 3 6	3,699,534 16 6	408,462 9 7	3,291,072 6 11
6 15 2	1,250,000 0 0		1,250,000 0 0	170,814 1 6	1,079,185 18 6	119,151 19 11	960,033 18 7
7 5 0	2,311,067 18 0		2,311,067 18 0	315,810 7 0	1,995,257 11 0	220,294 13 8	1,774,962 17 4
Total	9,826,202 19 11	20,219 10 9	9,805,983 9 2	1,340,000 0 0	8,465,983 9 2	934,722 0 0	7,531,261 9 2
VICTORIA.							
4 13 7	20,000 0 0	20,000 0 0					
4 13 10	73,247 7 9	73,247 7 9					
5 3 10	17,084 13 5	17,084 13 5					
5 5 3	1,644,915 3 1	63,768 16 10	1,581,146 6 3	209,138 0 0	1,372,008 6 3	80,566 7 1	1,291,441 19 2
5 6 11	3,553,124 4 9		3,553,124 4 9	469,971 0 0	3,083,153 4 9	181,047 6 3	2,902,105 18 6
6 7 0	5,480,742 14 10		5,480,742 14 10	724,937 0 0	4,755,805 14 10	279,267 18 10	4,476,537 16 0
6 15 2	613,247 18 6		613,247 18 6	81,115 0 0	532,132 18 6	31,247 12 8	500,885 5 10
7 5 0	565,813 13 10	.	565,813 13 10	74,839 0 0	490,974 13 10	28,830 15 2	462,143 18 8
Total .: ..	11,968,175 16 2	174,100 18 0	11,794,074 18 2	1,560,000 0 0	10,234,074 18 2	600,960 0 0	9,633,114 18 2
QUEENSLAND.							
5 5 3	326,843 11 11	17,113 10 4	309,730 1 7	54,478 0 0	255,252 1 7	15,739 5 0	239,512 16 7
5 6 11	401,240 19 9	.	401,240 19 9	70,573 0 0	330,667 19 9	20,389 10 4	310,278 9 5
6 7 0	1,351,366 7 4	..	1,351,366 7 4	237,689 0 0	1,113,677 7 4	68,671 2 6	1,045,006 4 10
7 5 0	638,245 11 3	..	638,245 11 3	112,260 0 0	525,985 11 3	32,433 2 2	493,552 9 1
Total	2,717,696 10 3	17,113 10 4	2,700,582 19 11	475,000 0 0	2,225,582 19 11	137,233 0 0	2,088,349 19 11

THE SCHEDULE—*continued.*

Soldier Land Settlement—*continued.*

Column 1. Rate of Interest per annum applicable to the sums shown opposite thereto	Column 2. Sums lent to the State by the Commonwealth to 30th June 1925	Column 3. Repayment by the State to the Commonwealth to 30th June 1925	Column 4. Balances being indebtedness of the State to the Commonwealth at 30th June 1925	Column 5. Amount to be written off as at 1st October 1925 divided in proportion to the sums owing at the various rates of interest	Column 6. Reduced indebtedness of the State to the Commonwealth after 1st October 1925	Column 7. Amount to be written off as at 30th June 1927 divided in proportion to the sums owing at the various rates of interest	Column 8. Reduced indebtedness of the State to the Commonwealth after 30th June 1927
£ s. d.	£ s. d.	£ s. d.	£ s. d.	£ s. d.	£ s. d.	£ s. d.	£ s. d.
SOUTH AUSTRALIA							
5 5 3	91,774 16 6	24,774 18 0	66,999 18 6	13,410 0 0	53,589 18 6	19,037 11 7	34,552 6 11
5 6 11	522,282 19 6	..	522,282 19 6	104,530 0 0	417,752 19 6	148,404 17 0	269,348 2 6
6 7 0	1,730,157 12 9	..	1,730,157 12 9	346,275 0 0	1,383,882 12 9	491,618 0 9	892,264 12 0
7 5 0	513,564 8 8	..	513,564 8 8	102,785 0 0	410,779 8 8	145,927 10 8	264,851 18 0
Total	2,857,779 17 5	24,774 18 0	2,833,004 19 7	567,000 0 0	2,266,004 19 5	804,988 0 0	1,461,016 19 5
WESTERN AUSTRALIA.							
5 5 3	120,538 3 1	32,579 16 11	87,958 6 2	12,891 0 0	75,067 6 2		75,067 6 2
5 6 11	1,045,558 17 9	..	1,045,558 17 9	153,238 0 0	892,320 17 9	.	892,320 17 9
6 7 0	1,939,883 3 3	.	1,939,883 3 3	284,310 0 0	1,655,573 3 3		1,655,573 3 3
6 14 0	500,000 0 0	..	500,000 0 0	73,280 0 0	426,720 0 0	.	426,720 0 0
6 15 2	477,801 18 11		477,801 18 11	70,027 0 0	407,774 18 11	.	407,774 18 11
7 5 0	1,380,000 0 0		1,380,000 0 0	202,254 0 0	1,177,746 0 0	.	1,177,746 0 0
Total	5,463,782 3 0	32,579 16 11	5,431,202 6 1	796,000 0 0	4,635,202 6 1	.	4,635,202 6 1
TASMANIA.							
5 5 3	380,374 18 11	38,740 7 10	341,634 11 1	42,031 0 0	299,603 11 1	19,231 14 8	280,371 16 5
5 6 11	600,000 0 0	..	600,000 0 0	73,818 0 0	526,182 0 0	33,775 18 9	492,406 1 3
6 7 0	899,999 13 10	..	899,999 13 10	110,727 0 0	789,272 13 10	50,663 17 8	738,608 16 2
6 14 0	19,280 6 9	..	19,280 6 9	2,372 0 0	16,908 6 9	1,085 7 1	15,822 19 8
7 5 0	268,648 13 6	..	268,648 13 6	33,052 0 0	235,596 13 6	15,123 1 10	220,473 11 8
Total	2,168,303 13 0	38 746 7 10	2,129,563 5 2	262,000 0 0	1,867,563 5 2	119,880 0 0	1,747,683 5 2

APPENDIX D.

BILLS TO ALTER THE CONSTITUTION, INTRODUCED INTO THE PARLIAMENT OF THE COMMONWEALTH FROM 1901 TO 1935 (INCLUSIVE).

LIST OF CONSTITUTION ALTERATION BILLS INTRODUCED INTO THE PARLIAMENT OF THE COMMONWEALTH FROM 1901 TO 1935

Consecutive No. of Bill *	Short Title or Subject Matter of Bill with year of introduction	Page in this Volume
	1903	
1	Commonwealth Constitution Amendment [Seat of Government]	199
	1906	
2	Constitution Alteration [Nationalization of Monopolies]	200
3†	Constitution Alteration (Senate Elections)	201
4	Constitution Alteration (Special Duties)	204
5	Constitution Alteration (State Debts)	205
	1909	
6	Constitution Alteration [Nationalization of Monopolies]	206
7	Constitution Alteration (Creation of Court of Criminal Appeals)	207
8†	Constitution Alteration (Finance)	208
9	Constitution Alteration (Industrial Conditions)	212
10†	Constitution Alteration (State Debts)	213
	1910	
11†	Constitution Alteration (Legislative Powers)	214
12†	Constitution Alteration (Monopolies)	217
13	Constitution Alteration (Unification)	219
	1911	
14†	Constitution Alteration (Corporations)	229
15†	Constitution Alteration (Industrial Matters)	230
16†	Constitution Alteration (Nationalization of Monopolies)	232
17†	Constitution Alteration (Railway Disputes)	233
18†	Constitution Alteration (Trade and Commerce)	234
19†	Constitution Alteration (Trusts)	235
	1913	
20	Constitution Alteration (Corporations)	236
21	Constitution Alteration (Industrial Matters)	237
22	Constitution Alteration (Nationalization of Monopolies)	238
23	Constitution Alteration (Railway Disputes)	239
24	Constitution Alteration (Trade and Commerce)	240
25	Constitution Alteration (Trusts)	241
	1914	
26	Constitution Alteration (Corporations)	242
27	Constitution Alteration (Industrial Matters)	243
28	Constitution Alteration (Nationalization of Monopolies)	244
29	Constitution Alteration (Railway Disputes)	245
30	Constitution Alteration (Trade and Commerce)	246
31	Constitution Alteration (Trusts)	247

LIST OF CONSTITUTION ALTERATION BILLS, ETC.—*continued*

Consecutive No. of Bill *	Short Title or Subject Matter of Bill, with year of introduction	Page in this Volume
	1915	
32‡	Constitution Alteration (Corporations)	248
33‡	Constitution Alteration (Industrial Matters)	249
34‡	Constitution Alteration (Nationalization of Monopolies)	250
35‡	Constitution Alteration (Railway Disputes)	251
36‡	Constitution Alteration (Senators' Term of Service)	252
37‡	Constitution Alteration (Trade and Commerce)	254
38‡	Constitution Alteration (Trusts)	255
	1916	
39	Constitution Alteration (Corporations)	256
40	Constitution Alteration (Industrial Matters)	256
41	Constitution Alteration (Nationalization of Monopolies)	256
42	Constitution Alteration (Railway Disputes)	256
43	Constitution Alteration (Trade and Commerce)	256
44	Constitution Alteration (Trusts)	256
	1919	
45†	Constitution Alteration (Legislative Powers)	257
46†	Constitution Alteration (Nationalization of Monopolies)	261
	1926	
47†	Constitution Alteration (Essential Services)	264
48†	Constitution Alteration (Industry and Commerce)	265
	1928	
49†	Constitution Alteration (State Debts)	268
	1930	
50	Constitution Alteration (Industrial Powers)	270
51	Constitution Alteration (Power of Amendment)	271
52	Constitution Alteration (Trade and Commerce)	272

* The consecutive numbers allotted in the first column of this Table to Constitution Alteration Bills and appearing on the Bills themselves are not in any way official, but have been given solely for the purposes of this volume

† Indicates that the Bill was passed by both Houses of the Parliament and submitted to the electors. For particulars of voting of the electors, *see* footnote to copy of Bill on page indicated in third column of above table

‡ Indicates that the Bill was passed by both Houses of the Parliament, but withdrawn from submission to the electors prior to the date fixed for the polling

NOTE.—In the second column of the foregoing table, words in round brackets form part of the actual short title of the Bill. Words in square brackets do not form part of the short title of the Bill, but are inserted merely for the purpose of indicating the subject-matter of the Bill

On the 14th October, 1914, leave was given by the Senate to Senator Bakhap to introduce "A Bill for an Act to Amend the Commonwealth of Australia Constitution Act, 63 and 64 Victoria, Chapter 12," but the Bill in question was not introduced

[*Seat of Government* 1903.]

BILL NO. 1.*

A BILL

FOR

AN ACT

To amend Section One hundred and twenty-five of the Constitution of the Commonwealth.

BE it enacted by the King's Most Excellent Majesty, the Senate and the House of Representatives of the Commonwealth as follows:—

Short title.

1. This Act may be cited as the *Commonwealth Constitution Amendment Act* 1903.

Amendment of s 125.

2. Section one hundred and twenty-five of the Constitution of the Commonwealth of Australia is hereby amended by striking out the words "and be distant not less than one hundred miles from Sydney" in the first paragraph of the section.

Further amendment of s 125

3. Section one hundred and twenty-five of the Constitution of the Commonwealth of Australia is hereby further amended by striking out the second paragraph of the said section and substituting therefor the following words:—"Such portion of the territory to be acquired by or granted to the Commonwealth as shall consist of Crown Lands shall be so granted without any payment therefor."

Introduced into the House of Representatives by a private member (Mr. V L. Solomon) on 19th August, 1903 Second reading not moved Lapsed at prorogation

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*N B. The numbers given to this Bill and the other Bills in this Appendix are not in any way official, but have been given solely for the purposes of this volume

BILL NO. 2.

A BILL

FOR

AN ACT

To provide for an alteration of the Constitution.

BE it enacted by the King's Most Excellent Majesty, the Senate, and the House of Representatives, and subject to the provisions of section 128 of the Constitution.

Short title

1. This Act may be cited as the *Constitution Alteration Act* 1906.

2. Section fifty-one of the Constitution is altered by adding at the end thereof the following paragraph—

XL. The nationalization of monopolies with respect to production, manufacture, trade and commerce

---

Introduced into the Senate by a private member (Senator G F Pearce, now Senator the Right Hon Sir G. F. Pearce, K.C.V.O.) on 16th August, 1906. Second reading negatived by Senate on 4th October, 1906, the voting being equal.

BILL NO. 3.

[*As introduced into the Senate.*]

A BILL

FOR

AN ACT

To alter the provisions of the Constitution relating to the election of Senators

BE it enacted by the King's Most Excellent Majesty the Senate, and the House of Representatives of the Commonwealth of Australia, with the approval of the electors, as required by the Constitution, as follows —

Short title

1. This Act may be cited as *Constitution Alteration (Senate Elections)* 1907

Rotation of senators

2 Section thirteen of the Constitution is altered—

(*a*) by omitting the words "the third year," and inserting in lieu thereof the words "three years"

(*b*) by omitting the words "the sixth year," and inserting in lieu thereof the words "six years",

(*c*) by omitting the words 'in the year at the expiration of which," and inserting in lieu thereof 'within one year before",

(*d*) by omitting the word "January" wherever it occurs, and inserting in lieu thereof the word "July"

Extension of terms of service of certain senators

3.—(1.) The terms of service of the senators whose places would, but for this Act, become vacant at the expiration of the year One thousand nine hundred and nine are extended until the thirtieth day of June One thousand nine hundred and ten.

Introduced into the Senate on 17th August 1906 passed (with an amendment as indicated in the note on next page) on 19th September 1906 introduced into House of Representatives on 20th September 1906 passed without amendment on same day Submitted to the electors on 12th December 1906 and APPROVED Voting at Referendum

State	In favour	Not in favour	Informal
New South Wales	286 888	55 201	37 929
Victoria	[illegible]	[illegible]	38,936
Queensland	81 205	24 502	15 925
South Australia	4[illegible]	8 121	7 892
Western Australia	34 736	9 274	6,812
Tasmania	34 056	7 825	5,761
Totals	774 011	102 470	112 155

For copy of Bill as submitted to the electors, see *infra* p 203

For further details of voting, *see* Commonwealth Parliamentary Papers, Session 1907, p 487, *et seq*

Bill assented to 3rd April, 1907 (Now Act No 1, 1907—contained in this volume, *supra*, p 114)

(2.) The terms of service of the senators whose places would, but for this Act, become vacant at the expiration of the year One thousand nine hundred and twelve are extended until the thirtieth day of June One thousand nine hundred and thirteen.

NOTE.—By an amendment moved in the Senate on 5th September, 1906, the following clause was inserted:

Beginning of term of service of senators elected in 1906 not altered.

4. This Act shall not be taken to alter the time of beginning of the term of service of any senator elected in the year One thousand nine hundred and six.

BILL NO. 3.

[*As submitted to the electors.*]

A PROPOSED LAW

To alter the provisions of the Constitution relating to the election of Senators.

BE it enacted by the King's Most Excellent Majesty, the Senate, and the House of Representatives of the Commonwealth of Australia, with the approval of the electors, as required by the Constitution, as follows:—

Short title

1. This Act may be cited as *Constitution Alteration (Senate Elections)* 1906.

Rotation of senators

2. Section thirteen of the Constitution is altered—

(*a*) by omitting the words "the third year," and inserting in lieu thereof the words "three years";

(*b*) by omitting the words "the sixth year," and inserting in lieu thereof the words "six years";

(*c*) by omitting the words "in the year at the expiration of which," and inserting in lieu thereof "within one year before";

(*d*) by omitting the word "January" wherever it occurs, and inserting in lieu thereof the word "July".

Extension of terms of service of certain senators

3.—(1.) The terms of service of the senators whose places would, but for this Act, become vacant at the expiration of the year One thousand nine hundred and nine are extended until the thirtieth day of June One thousand nine hundred and ten.

(2.) The terms of service of the senators whose places would, but for this Act, become vacant at the expiration of the year One thousand nine hundred and twelve are extended until the thirtieth day of June, One thousand nine hundred and thirteen.

Beginning of term of service of senators elected in 1906 not altered

4. This Act shall not be taken to alter the time of beginning of the term of service of any senator elected in the year One thousand nine hundred and six.

For voting of the electors on this Bill see *supra* p. 201

BILL NO. 4.

A BILL

FOR

AN ACT

To alter the Constitution with respect to the Appropriation of Special Duties of Customs and of Excise.

BE it enacted by the King's Most Excellent Majesty, the Senate, and the House of Representatives of the Commonwealth of Australia, with the approval of the electors, as required by the Constitution, as follows:—

Short title

1. This Act may be cited as *Constitution Alteration (Special Duties)* 1906.

Alteration of section 87.

2. Section eighty-seven of the Constitution is altered—

(*a*) by inserting after the word "Excise" the words "(other than special duties of Customs and of Excise)";

(*b*) by inserting after the word "balance" the words "of the revenue from those duties (other than special duties)";

(*c*) by adding at the end of the section the following paragraph:—

"A special duty of Customs or of Excise is a Customs or Excise duty upon goods of a description not liable to Customs or Excise duty on the first day of January One thousand nine hundred and seven, and imposed expressly for specific purposes."

Introduced into the House of Representatives on 30th August, 1906; passed, without amendment on 20th September 1906. Introduced into the Senate on 20th September 1906. Amended by the Senate as follows:—

Alteration of Constitution

(1) By inserting clause 1A as follows:—

1A. The Constitution is altered by the addition of the following section:

"The Parliament of the Commonwealth may, for a special purpose, impose duties of Customs or Excise upon goods not liable to Customs or Excise duty on the first day of January One thousand nine hundred and seven, and may expend for such special purpose the whole of the amount so raised."

and

(2) By omitting clause 2.

On the motion in the Senate on 2nd October, 1906, for the third reading of the Bill, the voting was Ayes 18, Noes 13, but as that reading was not carried by an absolute majority of the Senate, the Bill was laid aside.

BILL NO. 5.

A BILL

FOR

AN ACT

To alter the Provisions of the Constitution relating to the Public Debts of the States.

BE it enacted by the King's Most Excellent Majesty, the Senate, and the House of Representatives of the Commonwealth of Australia, with the approval of the electors, as required by the Constitution, as follows:—

1. This Act may be cited as the *Constitution Alteration (State Debts)* 1907. Short title.

2. Section one hundred and five of the Constitution is altered— Alteration of sec. 105

(*a*) by omitting the words "as existing at the establishment of the Commonwealth or a proportion thereof according to the respective number of their people as shown by the latest statistics of the Commonwealth," and inserting in lieu thereof the words "or any part thereof"; and

(*b*) by inserting, after the word "convert," the word "redeem."

Introduced into the House of Representatives 15th September, 1906; passed, without amendment, on 20th September, 1906, introduced into the Senate on 20th September, 1906 Amended by the Senate as follows

(1) By inserting clause 1A as follows

1A. The Constitution is altered by the addition of the following section — Alteration of Constitution.

"The powers of the Parliament relating to the public debts of the States *shall* extend to *debts incurred since* the establishment of the Commonwealth"

and

(2) By omitting clause 2

The third reading was agreed to by the Senate on 2nd October, 1906

Amendment No. 1 of the Senate agreed to by the House of Representatives on 4th October, 1906, with the following amendments:—"Omit 'since', insert 'at any time after'; at end of clause add 'and to any part of the public debts of the States'."

Amendment No. 2 of the Senate agreed to by the House of Representatives on 4th October, 1906

First amendment of the House of Representatives to Senate Amendment No. 1 agreed to by the Committee of the Senate on 11th October, 1906.

Second amendment of the House of Representatives to Senate Amendment No. 1 not agreed to by Senate Committee.

On the motion in the Senate on 11th October, 1906, for the adoption of the Committee's report the voting was, Ayes 18, Noes 3, but, there not being an absolute majority, as required by section 128 of the Constitution, the President ruled that the Bill was not properly passed.

BILL NO. 6.

A BILL

FOR

AN ACT

To provide for an alteration of the Constitution.

BE it enacted by the King's Most Excellent Majesty, the Senate, and the House of Representatives, and subject to the provisions of section 128 of the Constitution.

Short title. 1. This Act may be cited as the *Constitution Alteration Act* 1909.

2. Section fifty one of the Constitution is altered by adding at the end thereof the following paragraph:—

(xi.) The nationalization of trades or industries with respect to production, manufacture, trade and commerce, which in the opinion of the Parliament are monopolies detrimental to the public interest, within a state or among the States.

Introduced into the Senate by a private member (Senator G. F. Pearce, now Senator the Right Hon. Sir G. F. Pearce K.C.V.O.) on 20th June, 1909. Second reading moved on 29th July 1909, but Bill not further proceeded with.

BILL NO. 7.

A BILL

FOR

AN ACT

To amend the provisions of Section Seventy-three of the Constitution.

BE it enacted by the King's Most Excellent Majesty, the Senate, and the House of Representatives of the Commonwealth of Australia, with the approval of the electors, as required by the Constitution, as follows:—

1. This Act may be cited as the *Constitution Alteration (Creation of Court of Criminal Appeals)* 1909 Short title.

2. The Constitution is altered by the addition to section seventy-three of the following sub-section:— Amendment of s. 73 of Constitution

"A Court of Criminal Appeal shall be constituted with such powers and subject to such regulations as shall be prescribed by the Parliament of the Commonwealth providing for the hearing and determination of appeals from any Court of a State exercising criminal jurisdiction whereby a conviction or sentence is recorded on any indictment presentment information or inquisition in any case whether involving fact or law or involving any questions necessary to be determined for the purpose of doing justice in any case"

Introduced into the Senate by a private member (Senator Col J. C. Neild) on 29th September, 1909 Second reading moved on 11th November, 1909, but Bill not further proceeded with

BILL NO. 8.

[*As introduced into the House of Representatives.*]

A BILL

FOR

AN ACT

To alter the provisions of the Constitution relating to Finance

Preamble

BE it enacted by the King's Most Excellent Majesty, the Senate, and the House of Representatives of the Commonwealth of Australia, with the approval of the electors, as required by the Constitution, as follows:—

Short title.

1 This Act may be cited as *Constitution Alteration (Finance)* 1909.

Expiration of sec. 87

2 The Constitution is altered by inserting, after section eighty-seven thereof, the following section:—

"87A.—(1) Notwithstanding anything in section eighty-seven of this Constitution, the Commonwealth may in the year beginning on the first day of July, One thousand nine hundred and nine, out of the net revenue of the Commonwealth from duties of customs and of excise, apply towards its expenditure for the service of that year any sum not exceeding Six hundred thousand pounds over and above one-fourth of the said net revenue.

"(2) From and after the thirtieth day of June, One thousand nine hundred and ten, section eighty-seven of this Constitution shall cease to have effect."

3 The* Constitution is altered by inserting, after section ninety-four thereof, the following sections:—

Expiration of book-keeping Clauses

"94A. From and after the thirtieth day of June, One thousand nine hundred and ten, sections ninety-three and ninety-four of this Constitution shall cease to have effect."

Per capita payment to States from 1st July, 1910.

"94B From and after the first day of July, One thousand nine hundred and ten, the Commonwealth shall pay to each State, by monthly instalments, or apply to the payment of interest on debts of the State taken over by the Commonwealth, an annual sum amounting to Twenty-five shillings per head of the number of the people of the State as ascertained according to the laws of the Commonwealth."

* NOTE—By amendment moved in the House of Representatives on 3rd November, 1909, the word "The" was omitted. *See Hansard*, Vol. 53, pp. 5227, 5292

"94c.—(1.) The Commonwealth shall, during the period of twenty-five years beginning on the first day of July, One thousand nine hundred and ten, pay to the State of Western Australia, by monthly instalments, an annual sum which in the first year shall be Two hundred and fifty thousand pounds, and in each subsequent year shall be progressively diminished by the sum of Ten thousand pounds.

Payment to Western Australia for 25 years from 1st July, 1910.

"(2.) One-half of the amount of the payments so made shall be debited to all the States (including the State of Western Australia) in proportion to the number of their people as ascertained according to the laws of the Commonwealth, and any sum so debited to a State may be deducted by the Commonwealth from any amounts payable to the State under the last preceding section or this section."

4. Section one hundred and five of the Constitution is altered

Public debts of States.

(*a*) by omitting the words—

"and thereafter the interest payable in respect of the debts shall be deducted and retained from the portions of the surplus revenue of the Commonwealth payable to the several States, or if such surplus is insufficient, or if there is no surplus, then the deficiency or the whole amount shall be paid by the several States," and

(*b*) by adding at the end thereof the following paragraph.—

"The interest and charges payable by the Commonwealth, in respect of the debts of a State taken over, may be deducted and retained from any moneys payable to the State under this Constitution and shall, to the extent to which they are not so deducted and retained, be paid by the State to the Commonwealth."

Introduced into the House of Representatives on 6th October, 1909, passed (with an amendment as indicated in the note at foot of the previous page) on 12th November, 1909, introduced into the Senate on 12th November 1909, passed, without amendment on 1st December 1909. Submitted to the electors on 13th April, 1910, and NOT APPROVED

Voting at Referendum—

State	In favour	Not in favour	Informal
New South Wales	227 650	258 107	31,411
Victoria	200 165	242 119	24,299
Queensland	87 130	72 516	9 489
South Australia	49 352	51 250	9 679
Western Australia	49 050	30 392	3,890
Tasmania	32 167	21,451	3,669
Totals	645,514	670,838	82,437

For copy of Bill as submitted to the electors, see *infra*, pp 210-11.

For further details of voting, *see* Commonwealth Parliamentary Papers, Session 1910, Vol. II., p. 209 *et seq*

BILL NO. 8.

[*As submitted to the electors.*]

A PROPOSED LAW

To alter the provisions of the Constitution relating to Finance.

Preamble.

BE it enacted by the King's Most Excellent Majesty, the Senate, and the House of Representatives of the Commonwealth of Australia, with the approval of the electors, as required by the Constitution, as follows:—

Short title.

1. This Act may be cited as *Constitution Alteration (Finance)* 1909.

Expiration sec. 87

2. The Constitution is altered by inserting, after section eighty-seven thereof, the following section:—

"87A.—(1.) Notwithstanding anything in section eighty-seven of this Constitution, the Commonwealth may in the year beginning on the first day of July, One thousand nine hundred and nine, out of the net revenue of the Commonwealth from duties of customs and of excise, apply towards its expenditure for the service of that year any sum not exceeding Six hundred thousand pounds over and above one-fourth of the said net revenue.

"(2.) From and after the thirtieth day of June, One thousand nine hundred and ten, section eighty-seven of this Constitution shall cease to have effect."

3. Constitution is altered by inserting, after section ninety-four thereof, the following sections:—

Expiration of book-keeping clauses.

"94A. From and after the thirtieth day of June, One thousand nine hundred and ten, sections ninety-three and ninety-four of this Constitution shall cease to have effect."

Per capita payment to States from 1st July, 1910.

"94B. From and after the first day of July, One thousand nine hundred and ten, the Commonwealth shall pay to each State, by monthly instalments, or apply to the payment of interest on debts of the State taken over by the Commonwealth, an annual sum amounting to Twenty-five shillings per head of the number of the people of the State as ascertained according to the laws of the Commonwealth."

Payment to Western Australia for 25 years from 1st July, 1910.

"94C.—(1.) The Commonwealth shall, during the period of twenty-five years beginning on the first day of July, One thousand nine hundred and ten, pay to the State of Western Australia, by monthly instalments, an annual sum which in the first year shall be Two hundred and fifty thousand pounds, and in each subsequent year shall be progressively diminished by the sum of Ten thousand pounds.

"(2.) One-half of the amount of the payments so made shall be debited to all the States (including the State of Western Australia) in proportion to the number of their people as ascertained according to the laws of the Commonwealth, and any sum so debited to a State may be deducted by the Commonwealth from any amounts payable to the State under the last preceding section or this section."

Public debts of States

4. Section one hundred and five of the Constitution is altered—

(*a*) by omitting the words

"and thereafter the interest payable in respect of the debts shall be deducted and retained from the portions of the surplus revenue of the Commonwealth payable to the several States, or if such surplus is insufficient, or if there is no surplus then the deficiency or the whole amount shall be paid by the several States;" and

(*b*) by adding at the end thereof the following paragraph

"The interest and charges payable by the Commonwealth, in respect of the debts of a State taken over, may be deducted and retained from any moneys payable to the State under this Constitution, and shall, to the extent to which they are not so deducted and retained, be paid by the State to the Commonwealth."

For voting of the electors on this Bill see *supra* p 209

BILL NO. 9.

A BILL

FOR

AN ACT

To amend the Constitution so that the Parliament may be empowered to legislate for the Adjustment of Industrial Conditions in the various States.

BE it enacted by the King's Most Excellent Majesty, the Senate, and the House of Representatives of the Commonwealth of Australia, with the approval of the electors as required by the Constitution, as follows —

Short title

1. This Act may be cited as *Constitution Alteration (Industrial Conditions)* 1909

Alteration of s. 51 of Constitution

2 The Constitution is altered by inserting in section fifty-one after paragraph (xxxv) the following paragraph (xxxv a) —

"(xxxva) The adjustment of industrial conditions in the various States"

Introduced into the Senate by a private member (Senator W A. Trenwith) on 30th September 1909 Second reading negatived by Senate on 4th November, 1909, the voting being equal

BILL NO. 10.

A BILL

FOR

AN ACT

To alter the provisions of the Constitution relating to the Public Debts of the States

BE it enacted by the King's Most Excellent Majesty the Senate, and the House of Representatives of the Commonwealth of Australia, with the approval of the electors, as required by the Constitution, as follows — Preamble

1 This Act may be cited as *Constitution Alteration (State Debts)* 1909 Short title.

2 Section one hundred and five of the Constitution is altered by omitting the words "as existing at the establishment of the Commonwealth" Alteration of s. 105

Introduced into the House of Representatives on 8th September 1909 passed, without amendment, on 11th November 1909 introduced into the Senate on 12th to the electors on 13th April 1910 and APPROVED November, 1909, passed, without amendment on 1st December 1909 Submitted

Voting at Referendum—

State	In favour	Not in favour	Informal
New South Wales	1 [illegible]	318 412	94 060
Victoria	[illegible]70 392	153 149	33 824
Queensland	102 [illegible]05	6 346	9 971
South Australia	[illegible]7[illegible]	[illegible]t 742	10 252
Western Australia	57 [illegible]07	[illegible]1 43[illegible]	4 324
Tasmania	4[illegible] [illegible]0	10 186	3 778
Totals	[illegible]15 0[illegible]3	5[illegible]6 [illegible]71	96 209

For further details of voting see Commonwealth Parliamentary Papers, Session 1910, vol II p 225 *et seq*

Bill assented to 6th August 1910 (Now Act No 3 1910— contained in this volume, *supra*, p 116

BILL NO. 11.

[*As introduced into the House of Representatives.*]

A BILL

FOR

AN ACT

To alter Section Fifty-one of the Constitution.

BE it enacted by the King's Most Excellent Majesty, the Senate, and the House of Representatives of the Commonwealth of Australia, with the approval of the electors, as required by the Constitution, as follows:—

Short title.

1. This Act may be cited as *Constitution Alteration (Legislative Powers)* 1910.

Par. (i.) Trade and Commerce

2. Section fifty-one of the Constitution is altered by omitting from paragraph (i.) the words "with other countries, and among the States."

Par. (xx.) Corporations.

3. Section fifty-one of the Constitution is altered by omitting the words "Foreign corporations, and trading or financial corporations formed within the limits of the Commonwealth," and inserting in lieu thereof the words—

"Corporations, including

(*a*) the creation, dissolution, regulation, and control of corporations,

(*b*) corporations formed under the law of a State (except any corporation formed solely for religious, charitable, scientific or artistic purposes, and not for the acquisition of gain by the corporation or its members), including their dissolution, regulation, and control; and

(*c*) foreign corporations, including their regulation and control"

Par. (xxv.) Industrial Matters.

4. Section fifty-one of the Constitution is altered by omitting the words "Conciliation and Arbitration for the prevention and settlement of industrial disputes extending beyond the limits of any one State", and inserting in lieu thereof the words "Industrial matters, including employment and the wages and conditions of employment and also including the prevention and settlement of industrial disputes."*

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* NOTE.—By amendment moved in the House of Representatives on 27th October, 1910, the words "Industrial matters, including employment and the wages and conditions of employment and also including the prevention and settlement of industrial disputes" were omitted, and the following words inserted.—

"Labour and employment, including—

(*a*) The wages and conditions of labour and employment in any trade industry or calling; and

(*b*) the prevention and settlement of industrial disputes, including disputes in relation to employment on or about railways the property of any State."

5. Section fifty-one of the Constitution is altered by adding at the end thereof the following paragraph:— Trusts and Monopolies.

"(xl.) Combinations and monopolies in relation to the production, manufacture, or supply of goods or services."

Introduced into the House of Representatives on 29th September, 1910; passed (with an amendment as indicated in the note at foot of the previous page) on 28th October, 1910; introduced into the Senate on 28th October 1910; passed, without amendment, on 16th November 1910. Submitted to the electors on 26th April 1911, and NOT APPROVED

Voting at Referendum—

State	In favour	Not in favour	Informal
New South Wales	135,968	240,605	7,396
Victoria	170 288	270,300	7,564
Queensland	69 552	89,420	3,002
South Australia	50 358	81,904	1,374
Western Australia	33 043	27 185	870
Tasmania	24 117	33 200	673
Totals	483 356	742 704	20 869

For copy of Bill as submitted to the electors, see *infra*, p 216

For further details of voting, *see* Commonwealth Parliamentary Papers, Session 1911, vol. II., p 163 *et seq*

BILL NO. 11.

[*As submitted to the electors.*]

A PROPOSED LAW

To alter Section Fifty-one of the Constitution.

Preamble. BE it enacted by the King's Most Excellent Majesty, the Senate, and the House of Representatives of the Commonwealth of Australia, with the approval of the electors, as required by the Constitution, as follows:—

Short title. 1. This Act may be cited as *Constitution Alteration (Legislative Powers)* 1910.

Par. (i.) Trade and Commerce. 2. Section fifty-one of the Constitution is altered by omitting from paragraph (i.) the words "with other countries, and among the States."

Par. (xx.) Corporations. 3. Section fifty-one of the Constitution is altered by omitting the words "Foreign corporations, and trading or financial corporations formed within the limits of the Commonwealth," and inserting in lieu thereof the words—

"Corporations, including—

(*a*) the creation, dissolution, regulation, and control of corporations;

(*b*) corporations formed under the law of a State (except any corporation formed solely for religious, charitable, scientific or artistic purposes, and not for the acquisition of gain by the corporation or its members), including their dissolution, regulation, and control; and

(*c*) foreign corporations, including their regulation and control."

Par. (xxxv.) Industrial Matters. 4. Section fifty-one of the Constitution is altered by omitting the words "Conciliation and Arbitration for the prevention and settlement of industrial disputes extending beyond the limits of any one State", and inserting in lieu thereof the words—

"Labour and employment, including—

(*a*) the wages and conditions of labour and employment in any trade industry or calling; and

(*b*) the prevention and settlement of industrial disputes, including disputes in relation to employment on or about railways the property of any State."

Trusts and Monopolies. 5. Section fifty-one of the Constitution is altered by adding at the end thereof the following paragraph:—

"(xl.) Combinations and monopolies in relation to the production, manufacture, or supply of goods or services."

For voting of the electors on this Bill, see *supra*, p. 215.

BILL NO. 12.

[*As introduced into the House of Representatives.*]

A BILL

FOR

AN ACT

To alter the Constitution by empowering the Parliament to make Laws with respect to Industries and Businesses declared to be the subject of a Monopoly

BE it enacted by the King's Most Excellent Majesty, the Senate, and the House of Representatives of the Commonwealth of Australia, with the approval of the electors as required by the Constitution, as follows –

1 This Act may be cited as *Constitution Alteration (Monopolies)* 1910 **Short title.**

2 The Constitution is altered by inserting after section fifty one thereof, the following section

"51A When each House of the Parliament in the same session, has by Resolution declared that the industry or business of producing* or supplying any specified goods or of supplying any specified services is the subject of a monopoly, the Parliament shall have power to make laws for carrying on the industry or business by or under the control of the Commonwealth, and acquiring for that purpose* any property used in connexion with the industry or business **Power to make laws with respect to monopolies.**

Introduced into the House of Representatives on 5th October, 1910 passed (with amendments as indicated in the note at foot of this page) on 3rd November, 1910, introduced into the Senate on 3rd November 1910 passed without amendment on 10th November 1910 Submitted to the electors on 26th April, 1911 and NOT APPROVED

Voting at Referendum—

State	In favour	Not in favour	Informal
New South Wales	138 237	238 177	7 618
Victoria	171 453	208 743	8 041
Queensland	70 259	88 472	3 200
South Australia	50 835	81 479	1 744
Western Australia	33 592	26 561	898
Tasmania	24 202	32 960	753
Totals	488 608	736 392	21 854

For copy of Bill as submitted to the electors, see *infra* p 218

For further details of voting see Commonwealth Parliamentary Papers, Session 1911, vol. II, p. 163, *et seq*

* NOTE—By amendments moved in the House of Representatives on 2nd November, 1910, the word "manufacturing" was inserted after the word "producing", and the words "on just terms" were inserted after the word "purpose".

BILL NO. 12.

[*As submitted to the electors.*]

A PROPOSED LAW

To alter the Constitution by empowering the Parliament to make Laws with respect to Industries and Businesses declared to be the subject of a Monopoly.

BE it enacted by the King's Most Excellent Majesty, the Senate, and the House of Representatives of the Commonwealth of Australia, with the approval of the electors, as required by the Constitution, as follows:—

Short title.

1. This Act may be cited as *Constitution Alteration (Monopolies)* 1910.

2. The Constitution is altered by inserting, after section fifty-one thereof, the following section:—

Power to make laws with respect to monopolies.

"51A. When each House of the Parliament, in the same session, has by Resolution declared that the industry or business of producing manufacturing or supplying any specified goods, or of supplying any specified services, is the subject of a monopoly, the Parliament shall have power to make laws for carrying on the industry or business by or under the control of the Commonwealth, and acquiring for that purpose on just terms any property used in connexion with the industry or business."

For voting of the electors on this Bill see *supra* p 217

BILL NO. 13.

A BILL

FOR

AN ACT

To alter the provisions of the Constitution so as to provide for the Reconstruction of the States of the Commonwealth.

WHEREAS not less than sixty thousand residents of the Commonwealth have presented Petitions to Parliament praying that the question of the Reconstruction of the States of the Commonwealth on a broader and more National basis be referred to the Electors: Be it therefore enacted by the King's Most Excellent Majesty, the Senate, and the House of Representatives of the Commonwealth, with the approval of the Elector as required by the Constitution, as follows:— Preamble.

1. This Act may be cited as *Constitution Alteration* (*Unification*) 1910. Short title.

THE PARLIAMENT.

2. The Constitution is altered by repealing section seven and inserting the following section in lieu thereof.

"7. The Senate shall be composed of Senators directly chosen by the people in the following manner: The Senate.

(i.) The Parliament shall divide the Commonwealth into sixteen Provinces having an equality of population with community of interests so far as may be practicable: Provided, that all that part or portion of Australia lying to the northward of the twenty-sixth parallel of south latitude and lying to the westward of the one hundred and thirty-eighth meridian of east longitude shall not be included in the division of the Commonwealth into Provinces:

(ii.) A quota shall be obtained by dividing the population of the Commonwealth, as ascertained at the census of One thousand nine hundred and eleven, by sixteen and the difference between the population of any two Provinces shall not exceed one-fourth above or one-fourth below the quota:

(iii.) Three Senators shall be chosen for each Province:

(iv.) Senators shall be chosen for a term of four years:

(v.) In choosing Senators each Province shall vote as one electorate."

Introduced into the House of Representatives by a private member (Mr. F. W. Bamford) on 13th September 1910. Second reading not moved. Lapsed at Prorogation.

New Section.

3. The Constitution is altered by inserting the following new section:—

"For the purposes of this Act, and until Parliament otherwise provides, all that part or portion of Australia lying to the southward of the twenty-sixth parallel of south latitude and lying to the westward of the one hundred and twenty-ninth meridian of east longitude and also the island of Tasmania shall each be deemed to be and to contain two Provinces."

Repeal.

4. The Constitution is altered by repealing sections nine, ten, and eleven.

Alteration of Section 12.

5. Section twelve of the Constitution is altered by omitting the words "The Governor of a State may cause writs to be issued for elections of Senators for the State" and inserting the words "The Governor-General may cause writs to be issued for the elections of Senators."

Casual vacancy in the Senate

6. The Constitution is altered by repealing section fifteen and inserting the following section in lieu thereof:—

"15. If the place of a Senator becomes vacant before the expiration of his term of office, the Governor-General shall within a reasonable time notify the Administrator of the Province in the representation of which the vacancy has occurred. Immediately upon the receipt of such notification the Administrator shall communicate the same to the Provincial Council, whereupon the Provincial Council shall, by an absolute majority of its members, choose some person to fill the vacancy for the unexpired term. Should the Provincial Council not be in session when the vacancy occurs, the Administrator, with the advice of the Executive Committee, shall appoint some person to fill the vacancy until the expiration of seven days after the commencement of the next ensuing session of the Council, or until the election of a successor, whichever shall first happen."

Repeal of Section 21.

7. The Constitution is altered by repealing section twenty-one.

New Section.

8. The Constitution is altered by inserting the following new section:—

Senators' privileges maintained.

"Notwithstanding anything contained in the preceding sections any and every Senator elected at the elections of One thousand nine hundred and ten, shall, if not re-elected at the first elections held under this Act, receive all monetary allowances, travelling and other privileges to which he would be entitled if this Act had not been passed."

HOUSE OF REPRESENTATIVES.

9. The Constitution is altered by repealing section twenty-four and inserting the following section in lieu thereof:—

House of Representatives.

"24. The House of Representatives shall be composed of Members directly chosen by the people in the following manner:—

(i.) The Parliament shall divide each Province into six electorates;

(ii.) a quota shall be obtained by dividing the population of each Province, as ascertained at the census of One thousand nine hundred and eleven, by six, and the difference between the population of any two electorates shall not exceed one-fifth above or one-fifth below the quota;

(iii.) one Member for the House of Representatives shall be chosen for each electorate;

(iv.) Members for the House of Representatives shall be chosen for a term of four years"

Repeal. 10. The Constitution is altered by repealing sections twenty-eight and twenty-nine.

Alteration of Section 28 11. The Constitution is altered by omitting the word "four" of section twenty-eight and inserting the word "six" in lieu thereof; provided that the Leader of His Majesty's Opposition shall receive an additional allowance of four hundred pounds a year

POWERS OF PARLIAMENT

Repeal of Section 51 12. Section fifty-one of the Constitution is repealed and the following section inserted in lieu thereof —

"51. The Parliament shall, subject to this Constitution, make laws for the peace, order, and good government of the Commonwealth"

THE EXECUTIVE GOVERNMENT.

Alteration of Section 65 13 Section sixty-five of the Constitution is altered by omitting the word "seven" and inserting the word "ten" in lieu thereof

Alteration of Section 66 14 Section sixty-six of the Constitution is altered by omitting the word "twelve" and inserting the word "sixteen" in lieu thereof

THE PROVINCES THE EXECUTIVE

Constitution of Provincial Executive 15. The Constitution is altered by inserting the following new sections.—

(1.) In each Province there shall be a chief executive officer, who shall be chosen by the people of the Province, and who shall be styled the Administrator of the Province, and in whose name all executive acts relating to provincial affairs therein shall be done

(2.) Each Administrator shall hold office for a term of four years, and shall not be removed before the expiration thereof except by the Governor-General in Council for cause assigned, which shall be communicated to both Houses of Parliament within fourteen days after the removal, or, if Parliament is not sitting then within seven days after the commencement of the next ensuing session

(3.) The Governor-General shall, whenever necessary, issue writs for the election of Administrators.

(4.) Parliament shall make such regulations as may be necessary to provide for the elections of Administrators

(5.) Any person qualified to vote for a member of the House of Representatives shall be qualified to vote for the election of an Administrator.

(6.) The Provincial Council may from time to time appoint a deputy Administrator to execute the office and functions of the Administrator during absence, illness, or other inability

(7.) No person shall be eligible to hold the office of Administrator unless he shall have reached the full age of thirty-five years, and shall have been a resident of the Commonwealth for five years next preceding the date of his election.

(8.) Until Parliament shall otherwise provide, the salaries of Administrators shall be One thousand pounds a year, and shall not be reduced during their respective terms of office.

PROVINCIAL COUNCILS.

Provincial Councils how chosen.

16.—(1.) In each Province there shall be a Provincial Council. Members of the Provincial Councils shall be directly chosen by the people in the following manner:—

(i.) Until Parliament otherwise provides each Province shall be divided into twenty-four electorates;

(ii.) A quota shall be ascertained by dividing the population of the Province, as disclosed at the census of One thousand nine hundred and eleven, by twenty-four, and the difference between any two electorates shall not exceed one-sixth above or one-sixth below the quota;

(iii.) One member for the Provincial Council shall be chosen for each electorate.

(2.) Each Provincial Council shall continue for a term of three years and shall not be subject to dissolution except by effluxion of time.

(3.) Any person qualified to vote for the election of a Provincial Councillor shall be qualified to be a Provincial Councillor.

(4.) Any person qualified to vote for the election of a member of the House of Representatives shall be qualified to vote for the election of a Provincial Councillor

Issue of writs for elections of Provincial Councillors.

17. The Governor-General shall cause writs to be issued for the first elections of Provincial Councillors, held under this Act, and all provisions made under this or other Acts of the Commonwealth for the elections of members for the House of Representatives, shall, *mutatis mutandis*, be applicable to such elections.

18. Subsequent to the first elections held under this Act, the Administrator shall issue writs for the elections of Provincial Councillors

Fixing time for holding sessions.

19. The Administrator of each Province shall, by proclamation, fix such time for holding the session of the Provincial Council as may be recommended by the Executive Committee, and may from time to time prorogue such Council: Provided that there shall be a session of every Provincial Council once at least every year so that a period of twelve months shall not intervene between the last sitting of the Council in one session and its first sitting in the next session.

Provincial Council to elect Chairman.

20. The Provincial Council shall elect from its members a Chairman who shall preside at all meetings of the Council: Provided that the Council may appoint a deputy Chairman, who shall preside during any absence of the Chairman.

Councils to make rules for conduct of business.

21. The Council shall make rules for the conduct of its proceedings. Such rules shall be transmitted by the Administrator to the Governor-General in Council and the said rules shall have full force and effect unless and until the Governor-General in Council shall express his disapproval thereof in writing to the Administrator.

Freedom of speech allowed at Council meetings.

22. There shall be freedom of speech in the Provincial Council and no member shall be liable to any action or proceeding in any court by reason of his speech or vote in such Council.

23. If the place of a Provincial Councillor become vacant before the expiration of his term of office the Provincial Council shall, by an absolute majority of its members, choose some person to fill the vacancy, and the person so chosen shall hold office as a Provincial Councillor until the next ensuing election of Provincial Councillors.

THE PROVINCIAL EXECUTIVE COMMITTEE.

Executive Committees.

24.—(1.) Each Provincial Council shall, at its first meeting after any general election, elect from its members four persons, who, with the Chairman, shall form an Executive Committee for the Province. The members of the Executive Committee shall hold office until the election of their successors in the same way.

(2.) If any casual vacancy arise in the Executive Committee the Provincial Council shall elect some person from amongst its members to fill the vacancy.

Allowances to Provincial Councillors.

25.—(1.) Each Provincial Council shall, subject to the approval of the Governor-General in Council, prescribe such monetary allowances as shall be paid to—

(i.) Members of the Provincial Councils:
(ii.) Chairmen of Provincial Councils:
(iii.) Members of the Executive Committees of Provincial Councils.

(2.) All allowances paid to Provincial Councillors, Chairmen of Provincial Councils, or members of the Executive Committees of Provincial Councils shall commence on the date of their election to the respective offices.

Questions, how determined.

26. Questions arising in the Executive Committee shall be determined by a majority of votes of the members present, and, in case of an equality of votes, the Chairman shall have also a casting vote. The Executive Committee shall, subject to the approval of the Governor-General in Council, make rules for the conduct of its proceedings.

Administration by Executive Committee.

27. The Executive Committee shall, on behalf of the Provincial Council, carry on the administration of provincial affairs. Until the first election of members of the Executive Committee such administration shall be carried on by the Administrator.

Powers vested in Executive Committees.

28. Subject to the provisions of this Act, all powers, authorities, and functions which at the coming into force of this Act are in any of the States vested in or exercised by the Governor or the Governor in Council, or any Minister of a State, shall, after the coming into force of this Act, be vested in the Executive of the Province so far as such powers, authorities, and functions relate to matters in respect of which the Provincial Council is competent to make such ordinances.

POWERS OF PROVINCIAL COUNCILS.

29. Subject to the provisions of this Act and the assent of the Governor-General in Council as hereinafter provided, the Provincial Council may make ordinances in relation to matters coming within the following classes of subjects (that is to say)—

(i.) Direct taxation within the Province in order to raise revenue for provincial purposes:

(ii.) The borrowing of money on the whole credit of the Province: Provided that no moneys shall be borrowed other than from the Governor-General in Council:

(iii.) Local works and undertakings other than railways and harbors, and such other works as extend beyond the borders of the Province and subject to the power of Parliament to declare any work a national work, and to provide for its construction by arrangement with the Provincial Council or otherwise:

(iv.) Roads, ferries, and bridges, other than bridges connecting two Provinces: Provided that when it is proposed to erect a bridge connecting two Provinces the Governor-General in Council may allow the Provincial Councils of the Provinces concerned to make mutual arrangements for the erection of any such bridge for the capital outlay upon which Parliament shall be responsible:

(v.) Water conservation and irrigation to the extent and subject to the conditions defined by Parliament:

(vi.) Agriculture and forestry.

(vii.) The establishment and management of hospitals and charitable institutions.

(viii.) Municipal institutions, divisional boards and councils, shire councils, and other local institutions of a like nature:

(ix.) Hotel, auctioneer, hawker, and other licences other than licences to professional persons:

(x.) Markets and pounds:

(xi.) Fish and game preservation; and the protection of native birds and animals:

(xii.) The incorporation of companies the operations of which do not extend beyond the Province:

(xiii.) Provincial lands, to the extent and subject to the conditions defined by Parliament:

(xiv.) Mines and minerals other than coal mines and coal:

(xv.) The imposition of punishment by fine, penalty, or imprisonment for enforcing any law or ordinance of the Province made in relation to any matter coming within any of the classes of subjects enumerated in this section:

(xvi.) Generally all matters which in the opinion of the Governor-General in Council are of a merely local or provincial nature:

(xvii.) All other subjects in respect of which Parliament shall by any law delegate the power of making ordinances to the Provincial Council.

Ordinances must be in harmony with Acts of Parliament.

30. Any ordinance made by a Provincial Council shall have effect in and for the Province as long and as far only as it is not repugnant to any Act of Parliament.

Provincial Council may repeal Parliament which laws.

31. A Provincial Council may recommend to Parliament the passing of any law relating to any matter in respect of which such Council is not competent to make ordinances.

Provincial fund to be formed.

32. A Provincial fund shall be formed in every Province, into which shall be paid all revenues raised by or accruing to the Provincial Council and all moneys paid over by the Governor-General in Council. Such fund shall be appropriated by the Provincial Council by ordinance for the purposes of the provincial administration generally, or, in the case of moneys paid over by the Governor-General in Council for particular purposes, then for such purposes. A vote or resolution for the appropriation of money shall not be passed unless the purpose of the appropriation has in the same session been recommended by message of the Administrator to the Council.

Ordinances must receive assent of Governor-General in Council

33. When a proposed ordinance has been passed by a Provincial Council it shall be presented by the Administrator to the Governor-General in Council for his assent. The Governor-General in Council shall declare within two months from the presentation to him of the proposed ordinance that he assents thereto, or that he withholds assent, or that he reserves the proposed ordinance for further consideration. A proposed ordinance so reserved shall not have any force unless and until within one year from the day on which it was presented to the Governor-General in Council he makes known by proclamation that it has received his assent.

Ordinances have force of law within Province

34. An ordinance assented to by the Governor-General in Council and promulgated by the Administrator shall, subject to the provisions of this Act, have the force of law within the Province.

Audit of Provincial accounts

35.—(1.) In each Province there shall be an auditor of accounts to be appointed by the Governor-General in Council.

(2.) No such auditor shall be removed from office except by the Governor-General in Council for cause assigned, which shall be communicated to Parliament within one week after the removal, if Parliament be then sitting, and, if Parliament be not sitting, then within one week after the commencement of the next ensuing sitting.

(3.) Each such auditor shall receive out of the Consolidated Revenue Fund such salary as the Governor-General in Council, with the approval of Parliament, shall determine.

(4.) Each such auditor shall examine and audit the accounts of the Province to which he is assigned subject to such regulations and orders as may be framed by the Governor-General in Council and approved by Parliament, and no warrant signed by the Administrator authorizing the issue of money shall have effect unless countersigned by such auditor.

THE JUDICATURE.

Repeal of Sections 74, 76, 77, 78, and 79.

36. The Constitution is altered by repealing sections seventy-four, seventy-six, seventy-seven, seventy-eight, and seventy-nine.

FINANCE AND TRADE.

Repeal of Section 81 and insertion of new Section.

37. The Constitution is altered by repealing section eighty-one and inserting the following section in lieu thereof:—

"81.—(1.) All revenues from whatever source arising over which the several States have, at the passing of this Act, power of appropriation and control, shall vest in the Governor-General in Council.

(2.) There shall also be formed a Consolidated Revenue Fund into which shall be paid all other revenues raised or received by the Governor-General in Council, and such fund shall be appropriated for the purposes of the Commonwealth, subject to the charges imposed under this Act."

Repeal of Sections 94 to 98 inclusive.

38. The Constitution is altered by repealing sections ninety-four to ninety-eight inclusive.

Repeal of Section 102

39. The Constitution is altered by repealing section one hundred and two.

New Section Finance Committee.

40. The Constitution is altered by inserting the following new section:—

"(1.) Upon the passing of this Act a Committee, to be called the Finance Committee, shall be appointed by the Governor-General in Council, and shall consist of the Auditor-General, the principal Secretary to the Treasury, the Comptroller of Customs, the Secretary to the Post Office, and three other persons.

(2.) The functions of the Finance Committee shall be to examine into all matters necessary to enable it to report and recommend to Parliament what proportion, if any, of the Consolidated Revenue should be paid over to the several Provinces.

(3.) Such proportion, if any, of the revenues raised from customs, excise, or other duties as the Finance Committee recommend shall be paid to the several Provinces shall be paid on a *per capita* basis.

(4.) The Finance Committee shall report within a period of twelve months from the date of its being formally constituted.

(5.) Pending the completion of the inquiry of the Finance Committee, and until Parliament otherwise provides, there shall be paid out of the Consolidated Revenue Fund to the Administrator of each Province *such sums as the Governor-General in Council may consider* necessary for the due performance of the services and duties assigned to the Provinces respectively."

Interest on public debts

41. The annual interest of the public debts of the States, and any sinking funds constituted by law, shall, upon this Act coming into force, form a first charge upon the Consolidated Revenue Fund.

All moneys and securities to pass over to Commonwealth.

42. All stocks, cash, bankers' balances, and securities for money belonging to each of the States, shall, upon this Act coming into force, become the property of the Commonwealth: Provided that the balances of any funds raised or appropriated for any special purpose in any of the States shall be deemed to have been appropriated by Parliament for the special purposes for which they have been provided.

Crown lands works and rights become property of Commonwealth.

43. Crown lands, public works, and all property throughout the Commonwealth, movable or immovable, and all rights of whatever description belonging to the several States, shall, upon this Act coming into force, vest in the Governor-General in Council subject to any debt or liability specifically charged thereon.

Commonwealth to take over all debts and liabilities.

44. The Commonwealth shall assume all debts and liabilities of the States existing at such time as this Act shall come into force, subject, notwithstanding any other provision contained in this Act, to the conditions imposed by any law under which such debts or liabilities

were raised or incurred, and without prejudice to any rights of security or priority in respect of the payment of principal, or interest, sinking fund, and other charges conferred on the creditors of any of the States, and may, subject to such conditions and rights, convert, renew, or consolidate such debts.

THE STATES.

Alteration of Section 106

45. Section one hundred and six of the Constitution is altered by omitting the words "in accordance with the Constitution of the States" and inserting in lieu thereof the words "by the Parliament of the Commonwealth."

Alteration Section 107

46. Section one hundred and seven of the Constitution is altered by adding at the end thereof the words "until altered by the Parliament of the Commonwealth."

Repeal.

47. The Constitution is altered by repealing sections one hundred and eleven, one hundred and thirteen, and one hundred and twenty

NEW STATES

Repeal.

48 The Constitution is altered by repealing section one hundred and twenty-one.

To provide for territory not elsewhere specially included

49. The Constitution is altered by repealing section one hundred and twenty-two and inserting the following section in lieu thereof:—

"The Parliament may make laws for the government of any territory within the Commonwealth which is specifically excluded from that area within which Provinces shall be established to wit—All that part or portion of Australia lying to the northward of the twenty-sixth parallel of South latitude, and lying to the westward of the one hundred and thirty-eighth meridian of East longitude Parliament may allow the representation of such territory in either House of the Parliament to such extent and on such terms as it may think fit."

Repeal.

50. The Constitution is altered by repealing sections one hundred and twenty-three and one hundred and twenty-four.

MISCELLANEOUS.

51. The Constitution is altered by repealing section one hundred and twenty-five and inserting the following section in lieu thereof:—

Federal Capital.

"125.—(1.) The seat of Government shall be determined by the Parliament, and shall be within territory which shall have been granted to or acquired by the Commonwealth.

(2.) Such territory shall contain an area of not less than one thousand square miles, and such portion thereof as shall consist of Crown lands shall be granted to the Commonwealth without any payment therefor.

(3.) The Parliament shall sit at Melbourne until it meet at the seat of Government."

New section

52. The Constitution is altered by inserting the following new section:—

"The Parliament shall make such laws or regulations as it may deem necessary for the management and control of railways, ports and harbors."

New section

53. Until Parliament otherwise provides, all officers of the Public Service of the States shall, upon this Act coming into force, become officers of the Commonwealth.

ALTERATION OF CONSTITUTION.

Alteration of section 128.

54. Section one hundred and twenty-eight of the Constitution is altered by omitting the three last paragraphs thereof and inserting in lieu thereof the following paragraphs:—

"When a proposed law is submitted to the electors the vote shall be taken in such manner as the Parliament prescribes.

And if a majority of the electors voting approve of the proposed law it shall be presented to the Governor-General for the King's assent."

The word "State" to be omitted

55. The Constitution is altered by omitting the word "State" wherever such omission may be necessary and inserting the word "Province" in lieu thereof.

Act to be brought into force

56. This Act shall be brought into force, by proclamation issued by the Governor-General, not later than the first day of March One thousand nine hundred and thirteen.

BILL NO. 14.

A BILL

FOR

AN ACT

To alter Paragraph (xx.) of Section Fifty-one of the Constitution.

BE it enacted by the King's Most Excellent Majesty, the Senate, and the House of Representatives of the Commonwealth of Australia, with the approval of the electors, as required by the Constitution, as follows:— Preamble.

1. This Act may be cited as *Constitution Alteration (Corporations)* 1912. Short title.

2. Section fifty-one of the Constitution is altered by omitting from paragraph (xx.) the words "Foreign corporations, and trading or financial corporations formed within the limits of the Commonwealth," and inserting in their stead the words— Corporations.

"Corporations, including—

(*a*) the creation, dissolution, regulation, and control of corporations;

(*b*) corporations formed under the law of a State, including their dissolution, regulation, and control; but not including municipal or governmental corporations, or any corporation formed solely for religious, charitable, scientific, or artistic purposes, and not for the acquisition of gain by the corporation or its members; and

(*c*) foreign corporations, including their regulation and control."

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* Introduced into the House of Representatives on 13th November, 1912; passed, without amendment, on 6th December, 1912, introduced into the Senate on 10th December, 1912; passed, without amendment on 18th December, 1912. Submitted to the electors on 31st May, 1913, and NOT APPROVED

Voting at Referendum—

State	In favour	Not in favour	Informal
New South Wales ..	317,668	361,255	37,676
Victoria ..	298,470	308,915	19,139
Queensland	146,936	123,632	9,736
South Australia	96,309	91,273	7,664
Western Australia	66,595	59,445	5,776
Tasmania	34,724	42,304	3,244
Totals	960,711	986,824	83,235

For further details of voting, see Commonwealth Parliamentary Papers, Session 1913, vol. II., p. 115, *et seq.*

BILL NO. 15.

[*As introduced into the House of Representatives.*]

A BILL

FOR

AN ACT

To alter Paragraph (xxxv.) of Section Fifty-one of the Constitution.

Preamble.

BE it enacted by the King's Most Excellent Majesty, the Senate, and the House of Representatives of the Commonwealth of Australia, with the approval of the electors, as required by the Constitution, as follows:—

Short title.

1. This Act may be cited as *Constitution Alteration (Industrial Matters)* 1912.

Industrial matters.

2. Section fifty-one of the Constitution is altered by omitting from paragraph (xxxv.) the words "Conciliation and arbitration for the prevention and settlement of industrial disputes extending beyond the limits of any one State," and inserting in their stead the words—

"Labour,* employment, and unemployment, including—

(*a*) the terms and conditions of labour and employment in any trade, industry,* or calling;

(*b*) the rights and obligations of employers and employees;*

(*c*) the maintenance of industrial peace; and

(*d*) the settlement of industrial disputes."

Introduced into the House of Representatives on 13th November, 1912; passed (with amendments as indicated in the note at foot of this page) on 6th December, 1912; introduced into the Senate on 10th December, 1912; passed, without amendment, on 18th December 1912. Submitted to the electors on 31st May, 1913, and NOT APPROVED

Voting at Referendum

State	In favour.	Not in favour.	Informal.
New South Wales	318,622	361,044	36,933
Victoria	297,892	309,804	18,837
Queensland	147,171	123 554	9,579
South Australia	96,626	91 361	7,259
Western Australia	66,451	59,612	5,753
Tasmania	34 839	42 236	3,197
Totals	961,601	987,611	81,558

For copy of Bill as submitted to the electors, see *infra*, p. 231.

For further details of voting, *see* Commonwealth Parliamentary Papers, Session 1913, vol II., p. 115, *et seq.*

* NOTE.—The following amendments were made to this Bill in the House of Representatives on 6th December, 1912 —

(*a*) After "Labour," in the fifth line of clause 2, insert "and";

(*b*) after "industry," in paragraph (*a*) of clause 2, insert "occupation,"; and

(*c*) after paragraph (*b*) of clause 2 insert the following new paragraph:—"(*ba*) strikes and lockouts; ".

BILL NO. 15.

[*As submitted to the electors*]

A PROPOSED LAW

To alter Paragraph (xxxv.) of Section Fifty-one of the Constitution

BE it enacted by the King's Most Excellent Majesty, the Senate, and the House of Representatives of the Commonwealth of Australia, with the approval of the electors, as required by the Constitution, as follows — Preamble.

1 This Act may be cited as Constitution Alteration (*Industrial Matters*) 1912. Short title.

2. Section fifty one of the Constitution is altered by omitting from paragraph (xxxv.) the words "Conciliation and arbitration for the prevention and settlement of industrial disputes extending beyond the limits of any one State," and inserting in their stead the words— Industrial matters

"Labour, and employment and unemployment including

(*a*) the terms and conditions of labour and employment in any trade, industry, occupation or calling,

(*b*) the rights and obligations of employers and employees,

(*c*) strikes and lockouts;

(*d*) the maintenance of industrial peace and

(*e*) the settlement of industrial disputes"

For voting of the electors on this Bill see *supra* p. 230

BILL NO. 16.

A BILL

FOR

AN ACT

To alter the Constitution by empowering the Parliament to make Laws with respect to Industries and Businesses declared to be the subject of a Monopoly.

Preamble.

BE it enacted by the King's Most Excellent Majesty, the Senate, and the House of Representatives of the Commonwealth of Australia, with the approval of the electors, as required by the Constitution, as follows:—

Short title.

1. This Act may be cited as *Constitution Alteration (Nationalization of Monopolies)* 1912.

Nationalisation of monopolies.

2. The Constitution is altered by inserting, after section fifty-one thereof, the following section:—

"51A.—(1.) When each House of the Parliament, in the same session, has by Resolution, passed by an absolute majority of its members, declared that the industry or business of producing, manufacturing, or supplying any specified services, is the subject of a monopoly, the Parliament shall have power to make laws for carrying on the industry or business by or under the control of the Commonwealth, and acquiring for that purpose on just terms any property used in connexion with the industry or business.

(2.) This section shall not apply to any industry or business conducted or carried on by the Government of a State or any public authority constituted under a State."

Introduced into the House of Representatives on 13th November, 1912; passed, without amendment, on 10th December, 1912; introduced into the Senate on 10th December, 1912; passed, without amendment, on 18th December, 1912. Submitted to the electors on 31st May, 1913, and NOT APPROVED.

Voting at Referendum—

State	In favour	Not in favour.	Informal.
New South Wales	301,192	341,724	73,083
Victoria .. .	287,379	298,326	40,526
Queensland	139,019	117,509	23,676
South Australia	91,411	86,915	16,929
Western Australia	64,988	57,184	9,044
Tasmania	33,176	40,189	6,907
Totals . . .	917,165	941,947	171,565

For further details of voting, *see* Commonwealth Parliamentary Papers, Session 1913, vol. II., p. 115, *et seq.*

BILL NO. 17.

A BILL

FOR

AN ACT

To alter the Constitution by empowering the Parliament to make Laws with respect to Industrial Disputes in relation to Employment in State Railway Services.

BE it enacted by the King's Most Excellent Majesty, the Senate, and the House of Representatives of the Commonwealth of Australia, with the approval of the electors, as required by the Constitution, as follows:— Preamble.

1. This Act may be cited as *Constitution Alteration (Railway Disputes)* 1912. Short title.

2. Section fifty-one of the Constitution is altered by inserting after paragraph (xxxv.) the following paragraph:— Railway disputes.

"(xxxv.A.) Conciliation and arbitration for the prevention and settlement of industrial disputes in relation to employment in the railway service of a State."

Introduced into the House of Representatives on 13th November, 1912, passed, without amendment, on 6th December, 1912, introduced into the Senate on 10th December, 1912; passed, without amendment, on 18th December, 1912 Submitted to the electors on 31st May, 1913, and NOT APPROVED.

Voting at Referendum—

State	In favour	Not in favour	Informal
New South Wales	316 998	361,743	37 928
Victoria	290,255	310,921	19,357
Queensland	146,521	123,859	9,924
South Australia	96,072	91,262	7,912
Western Australia	65,957	59,965	5,894
Tasmania	34 625	42,296	3,351
Totals	950 358	990,046	84,366

For further details of voting, *see* Commonwealth Parliamentary Papers, Session 1913, Vol. II., p. 115, *et seq*

BILL NO. 18.

A BILL

FOR

AN ACT

To alter Paragraph (1.) of Section Fifty-one of the Constitution.

Preamble.

BE it enacted by the King's Most Excellent Majesty, the Senate, and the House of Representatives of the Commonwealth of Australia with the approval of the electors, as required by the Constitution, as follows:—

Short title.

1. This Act may be cited as *Constitution Alteration (Trade and Commerce)* 1912.

Trade and Commerce.

2. Section fifty-one of the Constitution is altered—

(*a*) by omitting from paragraph (1.) the words "with other countries and among the States"; and

(*b*) by adding at the end of paragraph (1) the words "but not including trade and commerce upon railways the property of a State except so far as it is trade and commerce with other countries or among the States."

Introduced into the House of Representatives on 12th November, 1912; passed, without amendment, on 3rd December, 1912; introduced into the Senate on 4th December, 1912, passed, without amendment, on 18th December 1912. Submitted to the electors on 31st May 1913 and NOT APPROVED.

Voting at Referendum

State	In favour	Not in favour	Informal
New South Wales	317,848	350,418	39 323
Victoria	297,290	307 975	21,208
Queensland	146,187	122,813	11,904
South Australia	96,085	91 144	8,017
Western Australia	66 349	59,181	6,286
Tasmania	34,660	42 084	3,529
Totals	958,419	982 615	89,736

For further details of voting, *see* Commonwealth Parliamentary Papers, Session 1913, Vol II., p 115, *et seq*

BILL NO. 19.

A BILL

FOR

AN ACT

To alter the Constitution by empowering the Parliament to make Laws with respect to Trusts, Combinations, and Monopolies.

BE it enacted by the King's Most Excellent Majesty, the Senate, and the House of Representatives of the Commonwealth of Australia, with the approval of the electors, as required by the Constitution, as follows:— Preamble.

1. This Act may be cited as *Constitution Alteration (Trusts)* 1912. Short title.

2. Section fifty-one of the Constitution is altered by adding at the end thereof the following paragraph:— Trusts, combinations, and monopolies.

(xl.) Trusts, combinations, and monopolies in relation to the production, manufacture, or supply of goods, or the supply of services."

Introduced into the House of Representatives on 13th November, 1912, passed, without amendment, on 6th December 1912, introduced into the Senate on 10th December, 1912; passed, without amendment, on 18th December, 1912 Submitted to the electors on 31st May, 1913 and [illegible] APPROVED

Voting at Referendum—

State	In favour	Not in favour	Informal
New South Wales	319 150	358,155	39,284
Victoria	301 729	105 208	19,536
Queensland	147 871	122,088	10,345
South Australia	96 400	90,185	8,661
Western Australia	67 342	58 312	6 162
Tasmania	34 939	41,985	3,498
Totals	967 331	975,043	87,496

For further details of voting *see* Commonwealth Parliamentary Papers, Session 1913, Vol II., p. 115, *et seq*

BILL NO. 22.

A BILL

FOR

AN ACT

To alter the Constitution by empowering the Parliament to make Laws with respect to Industries and Businesses declared to be the subject of a Monopoly.

Preamble.

BE it enacted by the King's Most Excellent Majesty, the Senate, and the House of Representatives of the Commonwealth of Australia, with the approval of the electors, as required by the Constitution, as follows:—

Short title.

1. This Act may be cited as *Constitution Alteration (Nationalization of Monopolies)* 1913

Nationalization of monopolies.

2. The Constitution is altered by inserting, after section fifty-one thereof, the following section:—

"51A.—(1.) When each House of the Parliament, in the same session, has by Resolution, passed by an absolute majority of its members, declared that the industry or business of producing, manufacturing, or supplying any specified services, is the subject of a monopoly, the Parliament shall have power to make laws for carrying on the industry or business by or under the control of the Commonwealth, and acquiring for that purpose on just terms any property used in connexion with the industry or business.

(2.) This section shall not apply to any industry or business conducted or carried on by the Government of a State or any public authority constituted under a State."

Introduced into the Senate by a private member (the Leader of the Opposition) on 10th September, 1913; passed, without amendment, on 9th December, 1913; introduced into the House of Representatives on 9th December, 1913. Second reading not moved Lapsed at Prorogation

BILL NO. 23.

A BILL

FOR

AN ACT

To alter the Constitution by empowering the Parliament to make Laws with respect to Industrial Disputes in relation to Employment in State Railway Services.

BE it enacted by the King's Most Excellent Majesty, the Senate, and the House of Representatives of the Commonwealth of Australia, with the approval of the electors, as required by the Constitution, as follows:— Preamble

1. This Act may be cited as *Constitution Alteration (Railway Disputes)* 1913. Short title.

2. Section fifty-one of the Constitution is altered by inserting after paragraph (xxxv.) the following paragraph:— Railway disputes.

"(xxxv.A.) Conciliation and arbitration for the prevention and settlement of industrial disputes in relation to employment in the railway service of a State."

Introduced into the Senate by a private member (the Leader of the Opposition) on 10th September, 1913 passed, without amendment, on 9th December, 1913; introduced into the House of Representatives on 9th December, 1913. Second reading not moved Lapsed at Prorogation

BILL NO. 24.

A BILL

FOR

AN ACT

To alter Paragraph (i.) of Section Fifty-one of the Constitution.

Preamble. BE it enacted by the King's Most Excellent Majesty, the Senate, and the House of Representatives of the Commonwealth of Australia, with the approval of the electors, as required by the Constitution, as follows:—

Short title. 1. This Act may be cited as *Constitution Alteration (Trade and Commerce)* 1913.

Trade and Commerce. 2. Section fifty-one of the Constitution is altered—

(*a*) by omitting from paragraph (i.) the words "with other countries and among the States"; and

(*b*) by adding at the end of paragraph (i.) the words "but not including trade and commerce upon railways the property of a State except so far as it is trade and commerce with other countries or among the States."

Introduced into the Senate by a private member (the Leader of the Opposition) on 10th September, 1913; passed, without amendment, on 9th December, 1913; introduced into the House of Representatives on 9th December, 1913. Second reading not moved Lapsed at Prorogation

BILL NO. 25.

A BILL

FOR

AN ACT

To alter the Constitution by empowering the Parliament to make Laws with respect to Trusts, Combinations, and Monopolies.

BE it enacted by the King's Most Excellent Majesty, the Senate, and the House of Representatives of the Commonwealth of Australia, with the approval of the electors, as required by the Constitution, as follows — Preamble

1. This Act may be cited as *Constitution Alteration (Trusts)* 1913 Short title.

2. Section fifty-one of the Constitution is altered by adding at the end thereof the following paragraph —

"(xl.) Trusts, combinations, and monopolies in relation to the production, manufacture, or supply of goods, or the supply of services." Trusts combinations, and monopolies.

Introduced into the Senate by a private member (the Leader of the Opposition) on 10th September, 1913 passed without amendment, on 9th December, 1913; introduced into the House of Representatives on 9th December, 1913 Second reading not moved Lapsed at Prorogation

BILL NO. 26.

A BILL

FOR

AN ACT

To alter Paragraph (xx.) of Section Fifty-one of the Constitution.

Preamble. BE it enacted by the King's Most Excellent Majesty, the Senate, and the House of Representatives of the Commonwealth of Australia, with the approval of the electors, as required by the Constitution, as follows:—

Short title. 1. This Act may be cited as *Constitution Alteration (Corporations)* 1913.

Corporations. 2. Section fifty-one of the Constitution is altered by omitting from paragraph (xx.) the words "Foreign corporations, and trading or financial corporations formed within the limits of the Commonwealth," and inserting in their stead the words—

"Corporations, including—

(*a*) the creation, dissolution, regulation, and control of corporations;

(*b*) corporations formed under the law of a State, including their dissolution, regulation, and control; but not including municipal or governmental corporations, or any corporation formed solely for religious, charitable, scientific, or artistic purposes, and not for the acquisition of gain by the corporation or its members; and

(*c*) foreign corporations, including their regulation and control."

Introduced into the Senate by a private member (the Leader of the Opposition) on 16th April, 1914: passed, without amendment, on 11th June, 1914; introduced into the House of Representatives on 11th June, 1914. Second reading not moved. Lapsed at Prorogation Not submitted to the electors. Senate resolved, on 18th June, 1914, that an Address be presented to His Excellency the Governor-General, requesting that His Excellency be pleased to submit the proposed law (also the proposed laws contained in Bills Nos. 27, 28, 29, 30 and 31) to the electors Address presented but request refused. Refusal reported to Senate on 24th June, 1914

This Bill is identical with Bill No 20, *supra*

BILL NO. 27.

A BILL

FOR

AN ACT

To alter Paragraph (xxxv.) of Section Fifty-one of the Constitution.

BE it enacted by the King's Most Excellent Majesty, the Senate, and the House of Representatives of the Commonwealth of Australia, with the approval of the electors, as required by the Constitution, as follows – Preamble.

1. This Act may be cited as *Constitution Alteration (Industrial Matters)* 1913. Short title.

2. Section fifty-one of the Constitution is altered by omitting from paragraph (xxxv.) the words "Conciliation and arbitration for the prevention and settlement of industrial disputes extending beyond the limits of any one State," and inserting in their stead the words— Industrial matters.

"Labour, and employment, and unemployment, including—

(*a*) the terms and conditions of labour and employment in any trade, industry, occupation, or calling;

(*b*) the rights and obligations of employers and employees;

(*c*) strikes and lockouts;

(*d*) the maintenance of industrial peace; and

(*e*) the settlement of industrial disputes"

The footnote as to the procedure on Bill No. 26 (*supra*) applies equally to this Bill

This Bill is identical with Bill No. 21, *supra*.

BILL NO. 28.

A BILL

FOR

AN ACT

To alter the Constitution by empowering the Parliament to make Laws with respect to Industries and Businesses declared to be the subject of a Monopoly.

Preamble.

BE it enacted by the King's Most Excellent Majesty, the Senate, and the House of Representatives of the Commonwealth of Australia, with the approval of the electors, as required by the Constitution, as follows:—

Short title.

1. This Act may be cited as *Constitution Alteration (Nationalization of Monopolies)* 1913.

Nationalization of monopolies.

2. The Constitution is altered by inserting, after section fifty-one thereof, the following section:—

"51A.—(1.) When each House of the Parliament, in the same session, has by Resolution, passed by an absolute majority of its members, declared that the industry or business of producing, manufacturing, or supplying any specified services, is the subject of a monopoly, the Parliament shall have power to make laws for carrying on the industry or business by or under the control of the Commonwealth, and acquiring for that purpose on just terms any property used in connexion with the industry or business.

(2.) This section shall not apply to any industry or business conducted or carried on by the Government of a State or any public authority constituted under a State."

The footnote as to the procedure on Bill No. 26 (*supra*) applies equally to this Bill

This Bill is identical with Bill No. 22, *supra*.

BILL NO. 29.

A BILL

FOR

AN ACT

To alter the Constitution by empowering the Parliament to make Laws with respect to Industrial Disputes in relation to Employment in State Railway Services.

BE it enacted by the King's Most Excellent Majesty, the Senate, and the House of Representatives of the Commonwealth of Australia, with the approval of the electors, as required by the Constitution, as follows:— Preamble.

1. This Act may be cited as *Constitution Alteration (Railway Disputes)* 1913. Short title.

2. Section fifty-one of the Constitution is altered by inserting after paragraph (xxxv.) the following paragraph — Railway disputes.

"(xxxv.A.) Conciliation and arbitration for the prevention and settlement of industrial disputes in relation to employment in the railway service of a State."

The footnote as to the procedure on Bill No 26 (*supra*) applies equally to this Bill.

This Bill is identical with Bill No 23, *supra*

BILL NO. 30.

A BILL

FOR

AN ACT

To alter Paragraph (i.) of Section Fifty-one of the Constitution.

Preamble. BE it enacted by the King's Most Excellent Majesty, the Senate, and the House of Representatives of the Commonwealth of Australia, with the approval of the electors, as required by the Constitution, as follows:—

Short title 1. This Act may be cited as *Constitution Alteration (Trade and Commerce)* 1913

Trade and Commerce 2. Section fifty-one of the Constitution is altered—

(*a*) by omitting from paragraph (i.) the words "with other countries and among the States"; and

(*b*) by adding at the end of paragraph (i.) the words "but not including trade and commerce upon railways the property of a State except so far as it is trade and commerce with other countries or among the States."

The footnote as to the procedure on Bill No 26 (*supra*) applies equally to this Bill

This Bill is identical with Bill No 24 *supra*

BILL NO. 31.

A BILL

FOR

AN ACT

To alter the Constitution by empowering the Parliament to make Laws with respect to Trusts, Combinations, and Monopolies.

Preamble.

BE it enacted by the King's Most Excellent Majesty, the Senate, and the House of Representatives of the Commonwealth of Australia, with the approval of the electors, as required by the Constitution, as follows:—

Short title.

1. This Act may be cited as *Constitution Alteration (Trusts)* 1913.

Trusts, combinations, and monopolies.

2. Section fifty-one of the Constitution is altered by adding at the end thereof the following paragraph:—

"(xl.) Trusts, combinations, and monopolies in relation to the production, manufacture, or supply of goods, or the supply of services."

The footnote as to the procedure on Bill No 26 (*supra*) applies equally to this Bill.

This Bill is identical with Bill No 25, *supra*

BILL NO. 34.

A BILL

FOR

AN ACT

To alter the Constitution by empowering the Parliament to make Laws with respect to Industries and Businesses declared to be the subject of a Monopoly.

Preamble.

BE it enacted by the King's Most Excellent Majesty, the Senate, and the House of Representatives of the Commonwealth of Australia, with the approval of the electors, as required by the Constitution, as follows:—

Short title.

1. This Act may be cited as *Constitution Alteration (Nationalization of Monopolies)* 1915

2. The Constitution is altered by inserting, after section fifty-one thereof, the following section.—

Nationalisation of monopolies

"51A.—(1.) When each House of the Parliament, in the same session, has by Resolution, passed by an absolute majority of its members, declared that the industry or business of producing, manufacturing, or supplying any specified goods, or of supplying any specified services, is the subject of a monopoly, the Parliament shall have power to make laws for carrying on the industry or business by or under the control of the Commonwealth, and acquiring for that purpose on just terms any property used in connexion with the industry or business.

"(2.) This section shall not apply to any industry or business conducted or carried on by the Government of a State or any public authority constituted under a State"

Introduced into the House of Representatives on 18th June, 1915, passed, without amendment, on 2nd July, 1915, introduced into the Senate on 7th July, 1915; passed, without amendment, on 15th July, 1915 Writs issued on 2nd November, 1915, for submission of Bill to the electors on 11th December, 1915, but (under the authority of the *Referendum (Constitution Alteration) Act (No. 2)* 1915, assented to on 15th November 1915) withdrawn by proclamation dated 17th November, 1915, and published in the *Gazette*, No 143, dated 18th November, 1915 pages 2925 6

BILL NO. 35.

A BILL

FOR

AN ACT

To alter the Constitution by empowering the Parliament to make Laws with respect to Industrial Disputes in relation to Employment in State Railway Services.

BE it enacted by the King's Most Excellent Majesty, the Senate, and the House of Representatives of the Commonwealth of Australia, with the approval of the electors, as required by the Constitution, as follows:— Preamble.

1. This Act may be cited as *Constitution Alteration (Railway Disputes)* 1915. Short title.

2. Section fifty-one of the Constitution is altered by inserting after paragraph (xxxv.) the following paragraph:— Railway disputes

"(xxxv.A.) Conciliation and arbitration for the prevention and settlement of industrial disputes in relation to employment in the railway service of a State."

Introduced into the House of Representatives on 18th June, 1915, passed, without amendment, on 2nd July, 1915, introduced into the Senate on 7th July, 1915, passed, without amendment, on 15th July 1915. Writs issued on 2nd November, 1915, for submission of Bill to the electors on 11th December, 1915 but (under the authority of the *Referendum (Constitution Alteration) Act (No 2)* 1915, assented to on 15th November, 1915) withdrawn by proclamation dated 17th November, 1915, and published in the *Gazette*, No 143, dated 18th November, 1915, pages 2925-6

BILL NO. 36.

[*As introduced into the House of Representatives.*]

A BILL

FOR

AN ACT

To alter Section Thirteen of the Constitution.

BE it enacted by the King's Most Excellent Majesty, the Senate, and the House of Representatives of the Commonwealth of Australia, with the approval of the electors, as required by the Constitution, as follows:—

Short title.

1. This Act may be cited as the *Constitution Alteration (Senators' Term of Service)* 1915.

2. Section thirteen of the Constitution is altered to read as follows:—

Rotation of senators.

"13. As soon as may be after each first meeting of the Senate following a dissolution thereof, the Senate shall divide the senators chosen for each State into two classes, as nearly equal in number as practicable; and the places of the senators of the first class shall become vacant at the expiration of three years and two months, and the places of those of the second class at the expiration of six years and four months, from the beginning of their term of service; and afterwards the places of senators shall become vacant at the expiration of six years and four months from the beginning of their term of service.

The election to fill vacant places shall be made within one year before the places are to become vacant.

For the purposes of this section the term of service of the senators elected in the year One thousand nine hundred and fourteen shall be taken to have begun on the first day of October, One thousand nine hundred and fourteen, and the term of service of a senator elected to fill a vacancy thereafter occurring in rotation shall be taken to begin on the day on which the place which he is to fill becomes vacant."*

Introduced into the House of Representatives on 25th August, 1915; passed (with an amendment, as indicated in the note at foot of this page) on 27th August, 1915; introduced into the Senate on 27th August, 1915; passed, without amendment, on 2nd September, 1915. Writs issued on 2nd November, 1915, for submission of Bill to the electors on 11th December, 1915, but (under the authority of the *Referendum (Constitution Alteration) Act (No. 2)* 1915, assented to on 15th November 1915) withdrawn by proclamation dated 17th November, 1915, and published in the *Gazette*, No. 143, dated 18th November, 1915, pages 2925-6.

*NOTE.—The words ", and the term of service of senators elected at an election next after a dissolution of the Senate shall be taken to begin on the day of the first meeting of the House of Representatives after the dissolution." were added by amendment moved in the House of Representatives on 26th August, 1915.

For copy of Bill as passed by both Houses of the Parliament, see infra, p. 253

BILL NO. 36.

[*As passed by both Houses of the Parliament.*]*

A PROPOSED LAW

To alter Section Thirteen of the Constitution.

BE it enacted by the King's Most Excellent Majesty, the Senate, and the House of Representatives of the Commonwealth of Australia, with the approval of the electors, as required by the Constitution, as follows:— Preamble.

1. This Act may be cited as the *Constitution Alteration (Senators' Term of Service)* 1915. Short title.

2. Section thirteen of the Constitution is altered to read as follows:—

"13. As soon as may be after each first meeting of the Senate following a dissolution thereof, the Senate shall divide the senators chosen for each State into two classes, as nearly equal in number as practicable; and the places of the senators of the first class shall become vacant at the expiration of three years and two months, and the places of those of the second class at the expiration of six years and four months, from the beginning of their term of service; and afterwards the places of senators shall become vacant at the expiration of six years and four months from the beginning of their term of service. Rotation of senators.

The election to fill vacant places shall be made within one year before the places are to become vacant.

For the purposes of this section the term of service of the senators elected in the year One thousand nine hundred and fourteen shall be taken to have begun on the first day of October, One thousand nine hundred and fourteen, and the term of service of a senator elected to fill a vacancy thereafter occurring in rotation shall be taken to begin on the day on which the place which he is to fill becomes vacant, and the term of service of senators elected at an election next after a dissolution of the Senate shall be taken to begin on the day of the first meeting of the House of Representatives after the dissolution."

* Note—Not submitted to electors for reason set out in first footnote on previous page.

BILL NO. 37.

A BILL

FOR

AN ACT

To alter Paragraph (i.) of Section Fifty-one of the Constitution.

Preamble. BE it enacted by the King's Most Excellent Majesty, the Senate, and the House of Representatives of the Commonwealth of Australia, with the approval of the electors, as required by the Constitution, as follows:—

Short title. 1. This Act may be cited as *Constitution Alteration (Trade and Commerce)* 1915

Trade and Commerce. 2. Section fifty-one of the Constitution is altered by omitting from paragraph (i.) the words "with other countries and among the States"

Introduced into the House of Representatives on 18th June, 1915, passed, without amendment, on 2nd July, 1915 introduced into the Senate on 7th July, 1915; passed without amendment, on 15th July, 1915 Writs issued on 2nd November, 1915, for submission of Bill to the electors on 11th December, 1915, but (under the authority of the *Referendum (Constitution Alteration) Act (No 2)* 1915, assented to on 15th November, 1915) withdrawn by proclamation dated 17th November, 1915, and published in the *Gazette*, No 143, dated 18th November, 1915, pages 2925 6

BILL NO. 38.

A BILL

FOR

AN ACT

To alter the Constitution by empowering the Parliament to make Laws with respect to Trusts, Combinations, and Monopolies.

BE it enacted by the King's Most Excellent Majesty, the Senate, and the House of Representatives of the Commonwealth of Australia, with the approval of the electors, as required by the Constitution, as follows:— Preamble

1. This Act may be cited as *Constitution Alteration (Trusts)* 1915. Short title.

2. Section fifty-one of the Constitution is altered by adding at the end thereof the following paragraph — Trusts, combinations, and monopolies

"(xl.) Trusts, combinations, monopolies and arrangements in relation to—

(*a*) the production, manufacture, or supply of goods, or the supply of services, or

(*b*) the ownership of the means of production, manufacture, or supply of goods, or supply of services"

Introduced into the House of Representatives on 18th June, 1915; passed, without amendment, on 2nd July, 1915, introduced into the Senate on 7th July, 1915; passed, without amendment, on 15th July 1915. Writs issued on 2nd November, 1915, for submission of Bill to the electors on 11th December, 1915, but (under the authority of the *Referendum (Constitution Alteration) Act (No. 2)* 1915, assented to on 15th November, 1915) withdrawn by proclamation dated 17th November, 1915, and published in the *Gazette*, No 143, dated 18th November, 1915, pages 2925 6

BILL No. 39.—CONSTITUTION ALTERATION (CORPORATIONS).

BILL No. 40.—CONSTITUTION ALTERATION (INDUSTRIAL MATTERS).

BILL No. 41.—CONSTITUTION ALTERATION (NATIONALIZATION OF MONOPOLIES).

BILL No. 42.—CONSTITUTION ALTERATION (RAILWAY DISPUTES).

BILL No. 43.—CONSTITUTION ALTERATION (TRADE AND COMMERCE).

BILL No. 44.—CONSTITUTION ALTERATION (TRUSTS).

These Bills, which were introduced into the Senate by a private member (the Leader of the Opposition) on 13th December, 1916, are identical with Bills Nos. 32, 33, 34, 35, 37 and 38 respectively, with the exception of the substitution of the year "1916" for the year "1915" in the short title of each Bill. The actual text of these Bills has therefore not been included in this volume. The second reading of each Bill was moved on 15th December, 1916, but the motion for the second reading was ruled out of order by the President on the ground that as Bills exactly similar in terms were before the Senate and had been passed during that session, the motion was in contravention of Standing Order No. 133, which provided that during any session no question should be again submitted to the Senate which was the same in substance as one already agreed to during that session.

BILL NO. 45.

[*As introduced into the House of Representatives.*]

A BILL

FOR

AN ACT

To alter Section Fifty-one of the Constitution.

BE it enacted by the King's Most Excellent Majesty, the Senate, and the House of Representatives of the Commonwealth of Australia, with the approval of the electors, as required by the Constitution, as follows:— Preamble.

1. This Act may be cited as *Constitution Alteration (Legislative Powers)* 1919. Short title.

2. Section fifty-one of the Constitution is altered by omitting from paragraph (i.) the words "with other countries, and among the States", and by adding at the end of paragraph (i.) the words "Provided that the alteration of this paragraph by *Constitution Alteration (Legislative Powers)* 1919 shall not be construed to empower the Parliament to make laws with respect to the control or management of railways the property of a State, or the rates or fares on such railways:". Trade and Commerce.

3. Section fifty-one of the Constitution is altered by omitting from paragraph (xx.) the words "Foreign corporations, and trading or financial corporations formed within the limits of the Commonwealth:", and inserting in their stead the words— Corporations.

"Corporations, including—

(*a*)* the creation, dissolution, regulation, and control of corporations;

Introduced into the Houses of Representatives on 1st October, 1919; passed, without amendment, on 2nd October, 1919, introduced into the Senate on 3rd October, 1919; passed (with amendments as indicated in the notes at foot of this page and the next page) on 10th October, 1919. Amendments agreed to by House of Representatives on 10th October, 1919. Bill submitted to the electors on 13th December, 1919, and NOT APPROVED.

Voting at Referendum—

State.	In favour.	Not in favour.	Informal.
New South Wales	259,751	360,450	67,132
Victoria	369,210	201,369	66 227
Queensland	175,225	130,299	24,997
South Australia	40,520	119,789	17,656
Western Australia	45,142	44,892	9,854
Tasmania	18,509	36,861	10,128
Totals	911,357	924,160	195,394

For copy of Bill as submitted to the electors, see *infra*, pp. 259-60.
For further details of voting, *see* Commonwealth Parliamentary Papers, Session 1920-21, Vol. IV., p. 307 *et seq.*

* Note.—Paragraph (*a*) was omitted by amendment moved in the Senate on 10th October, 1919.

(*b*) corporations formed under the law of a State, including their dissolution, regulation, and control; but not including municipal or governmental corporations, or any corporation formed solely for religious, charitable, † scientific, or artistic purposes, and not for the acquisition of gain by the corporation or its members; and

(*c*) foreign corporations, including their regulation and control:".

Industrial matters

4. Section fifty-one of the Constitution is altered by omitting from paragraph (xxxv.) the words "Conciliation and arbitration for the prevention and settlement of industrial disputes extending beyond the limits of any one State:", and inserting in their stead the words—

"Industrial matters, including—

(*a*) labour;
(*b*) employment and unemployment;
(*c*) the terms and conditions of labour and employment in any trade, industry, occupation or calling;
(*d*) the rights and obligations of employers and employees;
(*e*) strikes and lock-outs;
(*f*) the maintenance of industrial peace; and
(*g*) the settlement of industrial disputes:"

Trusts

5. Section fifty-one of the Constitution is altered by adding at the end thereof the following paragraph:—

"(xl.) Trusts, combinations, monopolies and arrangements in relation to—

(*a*) the production, manufacture, or supply of goods, or the supply of services; or
(*b*) the ownership of the means of production, manufacture or supply of goods or supply of services.".

Duration of alterations made by *Constitution Alteration (Legislative Powers)* 1919

6. The alterations made by this Act shall remain in force—

(*a*) until the expiration of three years from the assent of the Governor-General thereto; or
(*b*) until a convention constituted by the Commonwealth makes recommendations for the alteration of the Constitution and the people endorse those recommendations,

whichever first happens, and shall then cease to have effect:

Provided that if no such convention is constituted by the Commonwealth before the thirty-first day of December, One thousand nine hundred and twenty, the alterations made by this Act shall cease to have effect on the said thirty-first day of December, One thousand nine hundred and twenty.

*

† NOTE.—The word "educational" was inserted after the word "charitable", by amendment moved in the Senate on 10th October, 1919.

* By amendment moved in the Senate on 10th October, 1919, the following sub-clause was added to clause 6:—

"(2.) No law passed by the Parliament by virtue of the powers conferred by this Act shall continue to have any force or effect, by virtue of this Act, after the alterations made by this Act have ceased to have effect."

BILL NO. 45.

[*As submitted to the electors.*]

A PROPOSED LAW

To alter Section fifty-one of the Constitution.

Preamble

BE it enacted by the King's Most Excellent Majesty, the Senate, and the House of Representatives of the Commonwealth of Australia, with the approval of the electors, as required by the Constitution, as follows:—

Short title

1. This Act may be cited as *Constitution Alteration* (*Legislative Powers*) 1919.

Trade and Commerce

2. Section fifty-one of the Constitution is altered by omitting from paragraph (i.) the words "with other countries, and among the States", and by adding at the end of paragraph (i) the words "Provided that the alteration of this paragraph by *Constitution Alteration* (*Legislative Powers*) 1919 shall not be construed to empower the Parliament to make laws with respect to the control or management of railways the property of a State, or the rates or fares on such railways:".

Corporations.

3. Section fifty-one of the Constitution is altered by omitting from paragraph (xx.) the words "Foreign corporations, and trading or financial corporations formed within the limits of the Commonwealth:", and inserting in their stead the words—

"Corporations, including—

(*a*) corporations formed under the law of a State, including their dissolution, regulation, and control; but not including municipal or governmental corporations, or any corporation formed solely for religious, charitable, educational, scientific, or artistic purposes, and not for the acquisition of gain by the corporation or its members; and

(*b*) foreign corporations, including their regulation and control:".

Industrial matters

4. Section fifty-one of the Constitution is altered by omitting from paragraph (xxxv.) the words "Conciliation and arbitration for the prevention and settlement of industrial disputes extending beyond the limits of any one State:", and inserting in their stead the words—

"Industrial matters, including—

(*a*) labour;
(*b*) employment and unemployment;
(*c*) the terms and conditions of labour and employment in any trade, industry, occupation or calling;
(*d*) the rights and obligations of employers and employees;
(*e*) strikes and lock-outs;
(*f*) the maintenance of industrial peace; and
(*g*) the settlement of industrial disputes:".

Trusts.

5. Section fifty-one of the Constitution is altered by adding at the end thereof the following paragraph:—

"(xl.) Trusts, combinations, monopolies and arrangements in relation to—

(*a*) the production, manufacture, or supply of goods, or the supply of services; or

(*b*) the ownership of the means of production, manufacture, or supply of goods, or supply of services.".

Duration of alterations made by Constitution Alteration (Legislative Powers) 1919.

6.—(1.) The alterations made by this Act shall remain in force—

(*a*) until the expiration of three years from the assent of the Governor-General thereto; or

(*b*) until a convention constituted by the Commonwealth makes recommendations for the alteration of the Constitution and the people endorse those recommendations,

whichever first happens, and shall then cease to have effect:

Provided that if no such convention is constituted by the Commonwealth *before the thirty-first day of December, One thousand nine* hundred and twenty, the alterations made by this Act shall cease to have effect on the said thirty-first day of December, One thousand nine hundred and twenty.

(2.) No law passed by the Parliament by virtue of the powers conferred by this Act shall continue to have any force or effect, by virtue of this Act, after the alterations made by this Act have ceased to have effect.

For voting of the electors on this Bill, see *supra*, p. 257.

BILL NO. 46.

[*As introduced into the House of Representatives.*]

A BILL

FOR

AN ACT

To alter the Constitution.

BE it enacted by the King's Most Excellent Majesty, the Senate, and the House of Representatives of the Commonwealth of Australia, with the approval of the electors, as required by the Constitution, as follows:— Preamble.

1. This Act may be cited as *Constitution Alteration (Nationalization of Monopolies)* 1919. Short title.

2. The Constitution is altered by inserting, after section fifty-one, the following section:—

"51A.—(1.) The Parliament shall have power to make laws for carrying on by or under the control of the Commonwealth, the industry or business of producing, manufacturing, or supplying any specified goods, or of supplying any specified services, and for acquiring for that purpose on just terms the assets and goodwill of the industry or business, where each House of the Parliament has in the same Session, by resolution passed by an absolute majority of its members, referred to the High Court, for inquiry and report by a Justice thereof, the question whether the industry or business is the subject of a monopoly, and where, after the report of the Justice has been received, each House of the Parliament has, in one Session, by resolution passed by an absolute majority of its members, declared that the industry or business is the subject of a monopoly. Nationalization of Monopolies.

Introduced into the House of Representatives on 2nd October, 1919; passed, without amendment, on 3rd October, 1919; introduced into the Senate on 3rd October, 1919; passed (with an amendment as indicated in the note on the next page) on 10th October, 1919. Amendments agreed to by the House of Representatives on 10th October, 1919. Bill submitted to the electors on 13th December, 1919, and NOT APPROVED

Voting at Referendum—

State.	In favour	Not in favour	Informal
New South Wales	227,156	365,847	124,330
Victoria	324,343	188,129	124,884
Queensland	162,062	122,650	45,209
South Australia	38,503	112,259	27,203
Western Australia	45,285	38,584	19,019
Tasmania	16,531	31,982	16,965
Totals	813,880	859,451	357,590

For copy of Bill as submitted to the electors, see *infra*, p. 263.

For further details of voting, see Commonwealth Parliamentary Papers, Session 1920-21, Vol. IV., p. 307 *et seq.*

"(2.) This section shall not apply to any industry or business conducted or carried on by the Government of a State or any public authority constituted under a State.".

Duration of alterations made by Constitution Alteration (Nationalization of Monopolies) 1919.

3. The alterations made by this Act shall remain in force—

(*a*) until the expiration of three years from the assent of the Governor-General thereto; or

(*b*) until a convention constituted by the Commonwealth makes recommendations for the alteration of the Constitution and the people endorse those recommendations,

whichever first happens, and shall then cease to have effect:

Provided that if no such convention is constituted by the Commonwealth before the thirty-first day of December, One thousand nine hundred and twenty, the alterations made by this Act shall cease to have effect on the said thirty-first day of December, One thousand nine hundred and twenty.

*

*NOTE.—By amendment moved in the Senate on 10th October, 1919, the following sub clause was added to clause 3

"(2.) No law passed by the Parliament by virtue of the powers conferred by this Act shall continue to have any force or effect, by virtue of this Act, after the alterations made by this Act have ceased to have effect."

BILL NO. 46.

[*As submitted to the electors.*]

A PROPOSED LAW

To alter the Constitution.

BE it enacted by the King's Most Excellent Majesty, the Senate, and the House of Representatives of the Commonwealth of Australia, with the approval of the electors, as required by the Constitution, as follows:— Preamble.

1. This Act may be cited as *Constitution Alteration (Nationalization of Monopolies)* 1919. Short title.

2. The Constitution is altered by inserting, after section fifty-one, the following section:—

"51A.—(1.) The Parliament shall have power to make laws for carrying on by or under the control of the Commonwealth, the industry or business of producing, manufacturing, or supplying any specified goods, or of supplying any specified services, and for acquiring for that purpose on just terms the assets and goodwill of the industry or business, where each House of the Parliament has in the same Session, by resolution passed by an absolute majority of its members, referred to the High Court, for inquiry and report by a Justice thereof, the question whether the industry or business is the subject of a monopoly, and where, after the report of the Justice has been received, each House of the Parliament has, in one Session, by resolution passed by an absolute majority of its members, declared that the industry or business is the subject of a monopoly. Nationalization of Monopolies

"(2.) This section shall not apply to any industry or business conducted or carried on by the Government of a State or any public authority constituted under a State.".

3.—(1.) The alterations made by this Act shall remain in force— Duration of alterations made by *Constitution Alteration (Nationalization of Monopolies)* 1919.

(*a*) until the expiration of three years from the assent of the Governor-General thereto: or

(*b*) until a convention constituted by the Commonwealth makes recommendations for the alteration of the Constitution and the people endorse those recommendations,

whichever first happens, and shall then cease to have effect:

Provided that if no such convention is constituted by the Commonwealth before the thirty-first day of December, One thousand nine hundred and twenty, the alterations made by this Act shall cease to have effect on the said thirty-first day of December, One thousand nine hundred and twenty.

(2.) No law passed by the Parliament by virtue of the powers conferred by this Act shall continue to have any force or effect, by virtue of this Act, after the alterations made by this Act have ceased to have effect.

For voting of the electors on this Bill, see *supra* p. 261.

BILL NO. 47.

A BILL

FOR

AN ACT

To alter the provisions of the Constitution in relation to Essential Services.

Preamble.

BE it enacted by the King's Most Excellent Majesty, the Senate, and the House of Representatives of the Commonwealth of Australia, with the approval of the electors, as required by the Constitution, as follows:—

Short title

1. This Act may be cited as *Constitution Alteration (Essential Services)* 1926.

Essential services.

2. Section fifty-one of the Constitution is altered by inserting after paragraph (v.) the following paragraph:—

"(v.) A. Protecting the interests of the public in case of actual or probable interruption of any essential service:".

Introduced into the House of Representatives on 20th May, 1926; passed, without amendment, on 16th June, 1926, introduced into the Senate on 16th June, 1926, passed, without amendment on 25th June, 1926 Submitted to the electors on 4th September, 1926, and NOT APPROVED

Voting at Referendum—

State	In favour	Not in favour.	Informal.
New South Wales	545,270	536,734	49,682
Victoria	296,548	537,560	54,553
Queensland	188,473	184,320	26,371
South Australia	81,966	179,740	19,786
Western Australia	89,566	113,222	11,797
Tasmania	43,679	46,217	5,440
Totals	1,195,502	1,597,793	171,629

For further details of voting, *see* Commonwealth Parliamentary Papers, Session 1926-28, Vol. II., p 413 *et seq*

BILL NO. 48.

[As introduced into the House of Representatives.]

A BILL

FOR

A PROPOSED LAW

To alter the provisions of the Constitution in relation to Industry and Commerce.

Preamble.

BE it enacted by the King's Most Excellent Majesty, the Senate, and the House of Representatives of the Commonwealth of Australia, with the approval of the electors, as required by the Constitution, as follows:—

Short title

1. This Act may be cited as *Constitution Alteration (Industry and Commerce)* 1926.

Industry and Commerce

2. Section fifty-one of the Constitution is altered—

(*a*) by omitting from paragraph (xxxv.) the words "extending beyond the limits of any one State"; and

---

Introduced into the House of Representatives on 20th May, 1926; passed (with amendments as indicated in the notes at foot of this page and the next page) on 10th June, 1926; introduced into the Senate on 11th June 1926; passed, without amendment, on 25th June 1926. Submitted to the electors on 4th September, 1926, and NOT APPROVED.

Voting at Referendum—

State.	In favour	Not in favour	Informal
New South Wales	566 973	533,284	31,309
Victoria	710 261	540,138	32,262
Queensland	202,691	186,374	10 599
South Australia ..	78 943	190,796	12 113
Western Australia ..	46,469	112,185	5,901
Tasmania	41,711	51,278	5,367
Totals	1,247,088	1,019,655	97,641

For copy of Bill as submitted to the electors, see *infra*, p. 207.

For further details of voting, *see* Commonwealth Parliamentary Papers, Session 1926-28, Vol. II., p. 413 *et seq.*

NOTE.—By amendment moved in the House of Representatives on 10th June, 1926, the following paragraph was inserted before paragraph (*a*) —

"(*aa*) by omitting from paragraph (xx.) the words 'Foreign corporations, and trading or financial corporations formed within the limits of the Commonwealth,' and inserting in their stead the words 'Corporations, including—

(*a*) the creation, regulation, control and dissolution of corporations;

(*b*) the regulation, control and dissolution of corporations formed under the law of a State; and

(*c*) the regulation and control of foreign corporations;

but not including municipal or governmental corporations, or any corporation formed solely for religious, charitable, scientific or artistic purposes, or any corporation not formed for the acquisition of gain by the corporation or its members';".

(*b*) by inserting after paragraph (xxxix.) the following paragraphs:—

"(xl.) Establishing authorities with such powers as the Parliament confers on them with respect to the regulation and determination of terms and conditions of industrial employment and of rights and duties of employers and employees with respect to industrial matters and things.

(xli.) Investing State authorities with any powers which the Parliament, by virtue of paragraph (xxxv.) or paragraph (xl.) of this section, has vested or has power to vest in any authority established by the Commonwealth

(xlii.) Trusts and combinations* in restraint of trade, trade unions, and associations of employers or of employees for industrial purposes, including the formation, dissolution,† regulation and control thereof."

NOTES.—*The words "(whether composed of individuals or corporations or both)" were inserted in paragraph (xlii) after the word "combinations", by amendment moved in the House of Representatives on 10th June 1926

†The words "dissolution, regulation and control" were omitted from paragraph (xlii) and the words "regulation control and dissolution" inserted in their stead by amendment moved in the House of Representatives on 10th June, 1926

BILL NO. 48.

[*As submitted to the electors.*]

A PROPOSED LAW

To alter the provisions of the Constitution in relation to Industry and Commerce.

BE it enacted by the King's Most Excellent Majesty, the Senate, and the House of Representatives of the Commonwealth of Australia, with the approval of the electors, as required by the Constitution, as follows:— Preamble

1. This Act may be cited as *Constitution Alteration (Industry and Commerce)* 1926. Short title

2. Section fifty-one of the Constitution is altered— Industry and Commerce

(*a*) by omitting from paragraph (xx.) the words "Foreign corporations, and trading or financial corporations formed within the limits of the Commonwealth", and inserting in their stead the words "Corporations, including—

(*a*) the creation, regulation, control and dissolution of corporations;

(*b*) the regulation, control and dissolution of corporations formed under the law of a State; and

(*c*) the regulation and control of foreign corporations;

but not including municipal or governmental corporations, or any corporation formed solely for religious, charitable, scientific or artistic purposes, or any corporation not formed for the acquisition of gain by the corporation or its members";

(*b*) by omitting from paragraph (xxxv.) the words "extending beyond the limits of any one State"; and

(*c*) by inserting after paragraph (xxxix.) the following paragraphs:—

"(xl.) Establishing authorities with such powers as the Parliament may confer on them with respect to the regulation and determination of terms and conditions of industrial employment and of rights and duties of employers and employees with respect to industrial matters and things:

(xli.) Investing State authorities with any powers which the Parliament, by virtue of paragraph (xxxv.) or paragraph (xl.) of this section, has vested or has power to vest in any authority established by the Commonwealth:

(xlii.) Trusts and combinations (whether composed of individuals or corporations or both) in restraint of trade, trade unions, and associations of employers or of employees for industrial purposes, including the formation, regulation, control and dissolution thereof.".

For voting of the electors on this Bill, see *supra*, p. 265

BILL NO. 49.

A BILL

FOR

AN ACT

To alter the Constitution by inserting therein further Provisions relating to the public debts of the States and the borrowing of money by the Commonwealth and the States.

Preamble.

BE it enacted by the King's Most Excellent Majesty, the Senate, and the House of Representatives of the Commonwealth of Australia, with the approval of the electors, as required by the Constitution, as follows:—

Short title.

1. This Act may be cited as *Constitution Alteration (State Debts)* 1928.

2. The Constitution is altered by inserting after section one hundred and five the following section:—

Agreements with respect to State debts.

"105A.—(1.) The Commonwealth may make agreements with the States with respect to the public debts of the States, including—

(*a*) the taking over of such debts by the Commonwealth;

(*b*) the management of such debts;

(*c*) the payment of interest and the provision and management of sinking funds in respect of such debts;

(*d*) the consolidation, renewal, conversion, and redemption of such debts;

(*e*) the indemnification of the Commonwealth by the States in respect of debts taken over by the Commonwealth; and

(*f*) the borrowing of money by the States or by the Commonwealth, or by the Commonwealth for the States.

Introduced into the House of Representatives on 31st August, 1928; passed, without amendment, on 4th September, 1928; introduced into the Senate on 5th September, 1928; passed, without amendment, on 14th September, 1928. Submitted to the electors on 17th November, 1928, and APPROVED.

Voting at Referendum—

State	In favour.	Not in favour.	Informal.
New South Wales	754,446	415,866	74,626
Victoria	791,425	110,142	51,909
Queensland	387,257	47,250	20,701
South Australia	164,628	98,017	32,534
Western Australia	96,913	71,552	15,019
Tasmania	92,732	31,014	12,357
Totals	2,287,391	773,853	218,357

For further details of voting, *see* Commonwealth Parliamentary Papers, Session 1929, Vol. II., p. 143 *et seq.*

Bill assented to 13th February, 1929 (now Act No. 1, 1929—contained in this volume, *supra*, p. 110).

"(2.) The Parliament may make laws for validating any such agreement made before the commencement of this section.

"(3.) The Parliament may make laws for the carrying out by the parties thereto of any such agreement.

"(4.) Any such agreement may be varied or rescinded by the parties thereto.

"(5.) Every such agreement and any such variation thereof shall be binding upon the Commonwealth and the States parties thereto notwithstanding anything contained in this Constitution or the Constitution of the several States or in any law of the Parliament of the Commonwealth or of any State.

"(6.) The powers conferred by this section shall not be construed as being limited in any way by the provisions of section one hundred and five of this Constitution."

BILL NO. 50.

A BILL

FOR

AN ACT

To alter the provisions of the Constitution with respect to Industrial Matters.

Preamble

BE it enacted by the King's Most Excellent Majesty, the Senate, and the House of Representatives of the Commonwealth of Australia, with the approval of the electors, as required by the Constitution, as follows:—

Short title.

1. This Act may be cited as *Constitution Alteration (Industrial Powers)* 1930.

Industrial matters.

2. Section fifty-one of the Constitution is altered by omitting from paragraph (xxxv.) the words "Conciliation and arbitration for the prevention and settlement of industrial disputes extending beyond the limits of any one State", and inserting in their stead the words—

"Industrial matters, including—

(*a*) labour;
(*b*) employment and unemployment;
(*c*) terms and conditions of labour and employment in any trade, industry, profession, occupation or calling;
(*d*) the rights and obligations of employers and employees;
(*e*) strikes and lock-outs;
(*f*) the maintenance of industrial peace; and
(*g*) the settlement of industrial disputes".

Introduced into the House of Representatives on 13th March, 1930; passed, without amendment, on 10th April 1930; introduced into the Senate on 10th April, 1930; second reading negatived on 28th May, 1930

BILL NO. 51.

A BILL

FOR

AN ACT

To alter the Constitution by conferring upon the Parliament full power to amend the Constitution.

BE it enacted by the King's Most Excellent Majesty, the Senate, and the House of Representatives of the Commonwealth of Australia, with the approval of the electors, as required by the Constitution, as follows:— Preamble.

1. This Act may be cited as *Constitution Alteration (Power of Amendment)* 1930. Short title

2. The Constitution is altered by inserting, after section one hundred and twenty-eight, the following section:—

"129. Notwithstanding anything in the last preceding section, the Parliament shall have full power to alter the Constitution in the following manner:— Alteration of Constitution by Parliament

The proposed law for the alteration thereof must, after the lapse of one month from its origination in a House of the Parliament, be passed by an absolute majority of each House of the Parliament, and be assented to by the Governor-General.".

Introduced into the House of Representatives on 19th March, 1930, passed, without amendment, on 10th April, 1930, introduced into the Senate on 10th April, 1930; second reading negatived on 28th May 1930

BILL NO. 52.

A BILL

FOR

AN ACT

To alter Paragraph (i.) of Section Fifty-one of the Constitution.

Preamble. BE it enacted by the King's Most Excellent Majesty, the Senate, and the House of Representatives of the Commonwealth of Australia, with the approval of the electors, as required by the Constitution, as follows:—

Short title. 1. This Act may be cited as *Constitution Alteration (Trade and Commerce)* 1930

Trade and Commerce. 2. Section Fifty-one of the Constitution is altered—

(*a*) by omitting from Paragraph (i.) the words "with other countries and among the States"; and

(*b*) by adding at the end of Paragraph (i.) the following proviso:—

"Provided that the alteration of this paragraph by *Constitution Alteration (Trade and Commerce)* 1930 shall not be construed to empower the Parliament to make laws with respect to the control or management of Railways the property of a State, or the rates or fares on such Railways:".

Introduced into the House of Representatives on 4th April, 1930, passed, without amendment, on 10th April, 1930 introduced into the Senate on 30th April, 1930; *second reading negatived on 28th May 1930*

Aviation 1936.

BILL NO. 53.

A BILL

FOR

AN ACT

To alter the Constitution with respect to Air Navigation and Aircraft.

BE it enacted by the King's Most Excellent Majesty, the Senate, and the House of Representatives of the Commonwealth of Australia, with the approval of the electors, as required by the Constitution, as follows:— Preamble.

1. This Act may be cited as *Constitution Alteration (Aviation)* 1936. Short title.

2. The Constitution is altered by inserting in section fifty-one after paragraph (vi.) the following paragraph: Air navigation and aircraft.

"(vi.A.) Air navigation and aircraft:"

Introduced into the House of Representatives on 12th November, 1936; passed, without amendment, on 18th November, 1936; introduced into the Senate on 18th November, 1936; passed, without amendment, on 2nd December, 1936. Submitted to the electors on 6th March, 1937 and NOT APPROVED.

Voting at Referendum—

State	In favour	Not in favour	Informal
New South Wales	664,589	741,821	55,450
Victoria	675,481	362,112	36,685
Queensland	310,352	191,251	18,330
South Australia	128,582	191,831	21,031
Western Australia	100,326	110,529	10,977
Tasmania	45,616	71,518	7,882
Totals	1,924,946	1,669,062	150,355

BILL NO. 54.

A BILL

FOR

AN ACT

To alter the Constitution with respect to marketing.

Preamble. BE it enacted by the King's Most Excellent Majesty the Senate, and the House of Representatives of the Commonwealth of Australia, with the approval of the electors, as required by the Constitution, as follows:

Short title 1 This Act may be cited as *Constitution Alteration (Marketing)* 1936.

2. The Constitution is altered by inserting after section ninety-two the following section:

Marketing laws "92A The provisions of the last preceding section shall not apply to laws with respect to marketing made by, or under the authority of,* the Parliament in the exercise of any power vested in the Parliament by this Constitution."

Introduced into the House of Representatives on 14th October, 1936, passed (with the amendment indicated in the note at the foot of this page) on 29th October, 1936, introduced into the Senate on 10th November, 1936, passed, without amendment, on 2nd December, 1936. Submitted to the electors 6th March, 1937, and NOT APPROVED.

Voting at Referendum—

State	In favour	Not in favour	Informal
New South Wales	456,802	896,457	108,601
Victoria	468,337	537,021	68,920
Queensland	187,685	296,302	35,946
South Australia	95,364	218,502	27,378
Western Australia	57,023	148,308	16,501
Tasmania	24,597	87,798	12,821
Totals	1,289,808	2,214,388	270,167

* NOTE.—The words ", or under the authority of," were inserted by an amendment moved in the House of Representatives on 29th October, 1936.

APPENDIX E.

THE STATUTE OF WESTMINSTER, 1931, (22 GEO. V. CH. 4),

AND THE FOLLOWING STATUTORY PROVISIONS THEREIN REFERRED TO, VIZ. :—

COLONIAL COURTS OF ADMIRALTY ACT, 1890, ss. 4, 7,

COLONIAL LAWS VALIDITY ACT, 1865,

INTERPRETATION ACT, 1889, s. 18, (DEFINITION OF "COLONY");

MERCHANT SHIPPING ACT, 1894, ss. 735, 736

THE STATUTE OF WESTMINSTER, 1931.

22 Geo. V., Ch. 4.

An Act to give effect to certain resolutions passed by Imperial Conferences held in the years 1926 and 1930.

[11th December, 1931.]

WHEREAS the delegates of His Majesty's Governments in the United Kingdom, the Dominion of Canada, the Commonwealth of Australia, the Dominion of New Zealand, the Union of South Africa, the Irish Free State and Newfoundland, at Imperial Conferences holden at Westminster in the years of our Lord nineteen hundred and twenty-six and nineteen hundred and thirty did concur in making the declarations and resolutions set forth in the Reports of the said Conferences:

And whereas it is meet and proper to set out by way of preamble to this Act that, inasmuch as the Crown is the symbol of the free association of the members of the British Commonwealth of Nations, and as they are united by a common allegiance to the Crown, it would be in accord with the established constitutional position of all the members of the Commonwealth in relation to one another that any alteration in the law touching the Succession to the Throne or the Royal Style and Titles shall hereafter require the assent as well of the Parliaments of all the Dominions as of the Parliament of the United Kingdom:

And whereas it is in accord with the established constitutional position that no law hereafter made by the Parliament of the United Kingdom shall extend to any of the said Dominions as part of the law of that Dominion otherwise than at the request and with the consent of that Dominion:

And whereas it is necessary for the ratifying, confirming and establishing of certain of the said declarations and resolutions of the said Conferences that a law be made and enacted in due form by authority of the Parliament of the United Kingdom:

And whereas the Dominion of Canada, the Commonwealth of Australia, the Dominion of New Zealand, the Union of South Africa, the Irish Free State and Newfoundland have severally requested and consented to the submission of a measure to the Parliament of the United Kingdom for making such provision with regard to the matters aforesaid as is hereafter in this Act contained:

NOTE.—As to the application of sections 2, 3, 4, 5 and 6 of this Act to the Commonwealth of Australia, see section 10 of this Act and the footnote thereto, *infra*, p. 278

Now, therefore, be it enacted by the King's Most Excellent Majesty by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority the same, as follows :—

Meaning of "Dominion" in this Act.

1. In this Act the expression "Dominion" means any of the following Dominions, that is to say, the Dominion of Canada, the Commonwealth of Australia, the Dominion of New Zealand, the Union of South Africa, the Irish Free State and Newfoundland.

Validity of laws made by Parliament of a Dominion. 28 and 29 Vict. c. 63.

2.—(1.) The *Colonial Laws Validity Act*, 1865,* shall not apply to any law made after the commencement of this Act by the Parliament of a Dominion.

(2.) No law and no provision of any law made after the commencement of this Act by the Parliament of a Dominion shall be void or inoperative on the ground that it is repugnant to the law of England, or to the provisions of any existing or future Act of Parliament of the United Kingdom, or to any order, rule or regulation made under any such Act, and the powers of the Parliament of a Dominion shall include the power to repeal or amend any such Act, order, rule or regulation in so far as the same is part of the law of the Dominion.

Power of Parliament of Dominion to legislate extra-territorially.

3. It is hereby declared and enacted that the Parliament of a Dominion has full power to make laws having extra-territorial operation.

Parliament of United Kingdom not to legislate for Dominion except by consent

4. No Act of Parliament of the United Kingdom passed after the commencement of this Act shall extend, or be deemed to extend, to a Dominion as part of the law of that Dominion, unless it is expressly declared in that Act that that Dominion has requested, and consented to, the enactment thereof.

Powers of Dominion Parliaments in relation to merchant shipping 57 and 58 Vict. c. 60.

5. Without prejudice to the generality of the foregoing provisions of this Act, sections seven hundred and thirty-five and seven hundred and thirty-six of the *Merchant Shipping Act*, 1894,† shall be construed as though reference therein to the Legislature of a British possession did not include reference to the Parliament of a Dominion

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* NOTE.—For copy of the *Colonial Laws Validity Act*, 1865 see *infra*, pp 279–81

† Sections 735 and 736 of the *Merchant Shipping Act*, 1894, relating to the powers of Colonial Legislatures, are as follows :—

Power of colonial legislatures to alter provisions of Act.

735.—(1.) The legislature of any British possession may by any Act or Ordinance, confirmed by Her Majesty in Council, repeal, wholly or in part, any provisions of this Act (other than those of the Third Part thereof which relate to emigrant ships), relating to ships registered in that possession, but any such Act or Ordinance shall not take effect until the approval of Her Majesty has been proclaimed in the possession, or until such time thereafter as may be fixed by the Act or Ordinance for the purpose.

(2.) Where any Act or Ordinance of the legislature of a British possession has repealed in whole or in part as respects that possession any provision of the Acts repealed by this Act, that Act or Ordinance shall have the same effect in relation to the corresponding provisions of this Act as it had in relation to the provision repealed by this Act.

Regulation of coasting trade by colonial legislature

736. The legislature of a British possession, may, by any Act or Ordinance, regulate the coasting trade of that British possession, subject in every case to the following conditions :—

(a.) The Act or Ordinance shall contain a suspending clause providing that the Act or Ordinance shall not come into operation until Her Majesty's pleasure thereon has been publicly signified in the British possession in which it has been passed ;

(b.) The Act or Ordinance shall treat all British ships (including the ships of any other British possession) in exactly the same manner as ships of the British possession in which it is made ;

(c.) Where by treaty made before the passing of the Merchant Shipping (Colonial) Act, 1869 (that is to say, before the thirteenth day of May eighteen hundred and sixty-nine) Her Majesty has agreed to grant to any ships of any foreign state any rights or privileges in respect of the coasting trade of any British possession, those rights and privileges shall be enjoyed by those ships for so long as Her Majesty has already agreed or may hereafter agree to grant the same, anything in the Act or Ordinance to the contrary notwithstanding

57 & 58 Vict. c. 60.

Powers of Dominion Parliaments in relation to Courts of Admiralty, 53 and 54 Vict. c. 27.

6. Without prejudice to the generality of the foregoing provisions of this Act, section four of the *Colonial Courts of Admiralty Act*, 1890* (which requires certain laws to be reserved for the signification of His Majesty's pleasure or to contain a suspending clause), and so much of section seven of that Act* as requires the approval of His Majesty in Council to any rules of Court for regulating the practice and procedure of a Colonial Court of Admiralty, shall cease to have effect in any Dominion as from the commencement of this Act.

Saving for British North America Acts and application of the Act to Canada.

7.—(1.) Nothing in this Act shall be deemed to apply to the repeal, amendment or alteration of the British North America Acts, 1867 to 1930, or any order, rule or regulation made thereunder.

(2.) The provisions of section two of this Act shall extend to laws made by any of the Provinces of Canada and to the powers of the legislatures of such Provinces.

(3.) The powers conferred by this Act upon the Parliament of Canada or upon the legislatures of the Provinces shall be restricted to the enactment of laws in relation to matters within the competence of the Parliament of Canada or of any of the legislatures of the Provinces respectively.

Saving for Constitution Acts of Australia and New Zealand.

8. Nothing in this Act shall be deemed to confer any power to repeal or alter the Constitution or the Constitution Act of the Commonwealth of Australia or the Constitution Act of the Dominion of New Zealand otherwise than in accordance with the law existing before the commencement of this Act.

Saving with respect to States of Australia.

9.—(1.) Nothing in this Act shall be deemed to authorise the Parliament of the Commonwealth of Australia to make laws on any matter within the authority of the States of Australia, not being a matter within the authority of the Parliament or Government of the Commonwealth of Australia.

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* Sections 4 and 7 of the *Colonial Courts of Admiralty Act*, 1890, are as follows:—

Reservation of Colonial law for Her Majesty's assent.

"4. Every Colonial law which is made in pursuance of this Act, or affects the jurisdiction of or practice or procedure in any court of such possession in respect of the jurisdiction conferred by this Act, or alters any such Colonial law as above in this section mentioned, which has been previously passed, shall, unless previously approved by Her Majesty through a Secretary of State, either be reserved for the signification of Her Majesty's pleasure thereon, or contain a suspending clause providing that such law shall not come into operation until Her Majesty's pleasure thereon has been publicly signified in the British possession in which it has been passed.

Rules of court.

"7.—(1.) Rules of court for regulating the procedure and practice (including fees and costs) in a court in a British possession in the exercise of the jurisdiction conferred by this Act, whether original or appellate, may be made by the same authority and in the same manner as rules touching the practice, procedure, fees, and costs in the said court in the exercise of its ordinary civil jurisdiction respectively are made:

Provided that the rules under this section shall not, save as provided by this Act, extend to matters relating to the slave trade, and shall not (save as provided by this section) come into operation until they have been approved by Her Majesty in Council, but on coming into operation shall have full effect as if enacted in this Act, and any enactment inconsistent therewith shall, so far as it is so inconsistent, be repealed.

"(2.) It shall be lawful for Her Majesty in Council, in approving rules made under this section, to declare that the rules so made with respect to any matters which appear to Her Majesty to be matters of detail or of local concern may be revoked, varied, or added to without the approval required by this section.

"(3.) Such rules may provide for the exercise of any jurisdiction conferred by this Act by the full court, or by any judge or judges thereof, and subject to any rules, where the ordinary civil jurisdiction of the court can in any case be exercised by a single judge, any jurisdiction conferred by this Act may in the like case be exercised by a single judge.

(2.) Nothing in this Act shall be deemed to require the concurrence of the Parliament or Government of the Commonwealth of Australia in any law made by the Parliament of the United Kingdom with respect to any matter within the authority of the States of Australia, not being a matter within the authority of the Parliament or Government of the Commonwealth of Australia, in any case where it would have been in accordance with the constitutional practice existing before the commencement of this Act that the Parliament of the United Kingdom should make that law without such concurrence.

(3.) In the application of this Act to the Commonwealth of Australia the request and consent referred to in section four shall mean the request and consent of the Parliament and Government of the Commonwealth.

Certain sections of Act not to apply to Australia, New Zealand or Newfoundland unless adopted.

10.—(1.) None of the following sections of this Act, that is to say, sections two, three, four, five and six, shall extend to a Dominion to which this section applies as part of the law of that Dominion unless that section is adopted by the Parliament of the Dominion,* and any Act of that Parliament adopting any section of this Act may provide that the adoption shall have effect either from the commencement of this Act or from such later date as is specified in the adopting Act.

(2.) The Parliament of any such Dominion as aforesaid may at any time revoke the adoption of any section referred to in sub-section (1.) of this section.

(3.) The Dominions to which this section applies are the Commonwealth of Australia,* the Dominion of New Zealand and Newfoundland.

Meaning of "Colony" in future Acts. 52 and 53 Vict. c. 63.

11. Notwithstanding anything in the Interpretation Act, 1889,† the expression "Colony" shall not, in any Act of the Parliament of the United Kingdom passed after the commencement of this Act, include a Dominion or any Province or State forming part of a Dominion.

Short title.

12. This Act may be cited as the Statute of Westminster, 1931.

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*NOTE.—Sections 2, 3, 4, 5 and 6 of this Act had not, up to the date of the preparation of this volume, been adopted by the Parliament of the Commonwealth.

† The definition of "Colony" in the Interpretation Act 1889, s. 18 (3), is as follows:—

(3.) The expression "Colony" shall mean any part of His Majesty's dominions exclusive of the British Islands, and of British India, and where parts of such dominions are under both a central and a local legislature, all parts under the central legislature shall, for the purposes of this definition, be deemed to be one colony.

COLONIAL LAWS VALIDITY ACT, 1865.

28 and 29 Vic., C. 63.

An Act to remove Doubts as to the Validity of Colonial Laws.

[29th June, 1865.]

"WHEREAS Doubts have been entertained respecting the Validity of divers Laws enacted or purporting to have been enacted by the Legislatures of certain of Her Majesty's Colonies, and respecting the Powers of such Legislatures, and it is expedient that such Doubts should be removed:"

Be it hereby enacted by the Queen's Most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, as follows.

Definitions "Colony."

1. The Term "Colony" shall in this Act include all of Her Majesty's Possessions abroad in which there shall exist a Legislature, as hereinafter defined, except the Channel Islands, the *Isle of Man*, and such Territories as may for the Time being be vested in Her Majesty under or by virtue of any Act of Parliament for the Government of *India*:

"Legislature," "Colonial Legislature."

The Terms "Legislature" and "Colonial Legislature" shall severally signify the Authority, other than the Imperial Parliament of Her Majesty in Council, competent to make Laws for any Colony:

"Representative Legislature."

The Term "Representative Legislature" shall signify any Colonial Legislature which shall comprise a Legislative Body of which One Half are elected by Inhabitants of the Colony:

"Colonial Law."

The Term "Colonial Law" shall include Laws made for any Colony either by such Legislature as aforesaid or by Her Majesty in Council:

Act of Parliament, &c. when to extend to Colony.

An Act of Parliament, or any Provision thereof, shall, in construing this Act, be said to extend to any Colony when it is made applicable to such Colony by the express Words or necessary Intendment of any Act of Parliament:

"Governor."

The Term "Governor" shall mean the Officer lawfully administering the Government of any Colony:

"Letters Patent."

The Term "Letters Patent" shall mean Letters Patent under the Great Seal of the United Kingdom of *Great Britain* and *Ireland*.

Colonial Law when void for Repugnancy.

2. Any Colonial Law which is or shall be in any respect repugnant to the Provisions of any Act of Parliament extending to the Colony to which such Law may relate, or repugnant to any Order or Regulation made under Authority of such Act of Parliament, or having in the

Colony the Force and Effect of such Act, shall be read subject to such Act, Order, or Regulation, and shall, to the Extent of such Repugnancy, but not otherwise, be and remain absolutely void and inoperative.

Colonial Law when not void for Repugnancy.

3. No Colonial Law shall be or be deemed to have been void or inoperative on the Ground of Repugnancy to the Law of *England*, unless the same shall be repugnant to the Provisions of some such Act of Parliament, Order, or Regulation as aforesaid.

Colonial Law not void for Inconsistency with Instructions

4. No Colonial Law, passed with the Concurrence of or assented to by the Governor of any Colony, or to be hereafter so passed or assented to, shall be or be deemed to have been void or inoperative by reason only of any Instructions with reference to such Law or the Subject thereof which may have been given to such Governor by or on behalf of Her Majesty, by any Instrument other than the Letters Patent or Instrument authorizing such Governor to concur in passing or to assent to Laws for the Peace, Order, and good Government of such Colony, even though such Instructions may be referred to in such Letters Patent or last-mentioned Instrument.

Colonial Legislature may establish &c Courts of Law

5. Every Colonial Legislature shall have, and be deemed at all Times to have had, full Power within its Jurisdiction to establish Courts of Judicature, and to abolish and reconstitute the same, and to alter the Constitution thereof, and to make Provision for the Administration of Justice therein; and every Representative Legislature shall, in respect to the Colony under its Jurisdiction, have, and be deemed at all Times to have had, full Power to make Laws respecting the Constitution, Powers, and Procedure of such Legislature; provided that such Laws shall have been passed in such Manner and Form as may from Time to Time be required by any Act of Parliament, Letters Patent, Order in Council, or Colonial Law for the Time being in force in the said Colony.

Representative Legislature may alter Constitution

Certified Copies of Laws to be Evidence that they are properly passed.

6. The Certificate of the Clerk or other proper Officer of a Legislative Body in any Colony to the Effect that the Document to which it is attached is a true Copy of any Colonial Law assented to by the Governor of such Colony, or of any Bill reserved for the Signification of Her Majesty's Pleasure by the said Governor, shall be *prima facie* Evidence that the Document so certified is a true Copy of such Law or Bill, and, as the Case may be, that such Law has been duly and properly passed and assented to, or that such Bill has been duly and properly passed and presented to the Governor; and any Proclamation purporting to be published by Authority of the Governor in any Newspaper in the Colony to which such Law or Bill shall relate, and signifying Her Majesty's Disallowance of any such Colonial Law, or Her Majesty's Assent to any such reserved Bill as aforesaid, shall be *prima facie* Evidence of such Disallowance or Assent.

Proclamation to be Evidence of Assent and Disallowance.

"And whereas Doubts are entertained respecting the Validity of certain Acts enacted or reputed to be enacted by the Legislature of *South Australia*: Be it further enacted as follows:

Certain Acts of Legislature of South Australia to be valid.

7. All Laws or reputed Laws enacted or purporting to have been enacted by the said Legislature, or by Persons or Bodies of Persons for the Time being acting as such Legislature, which have received the Assent of Her Majesty in Council, or which have received the Assent of the Governor of the said Colony in the Name and on behalf of Her Majesty, shall be and be deemed to have been valid and effectual from the Date of such Assent for all Purposes whatever; provided that nothing herein contained shall be deemed to give Effect to any Law or reputed Law which has been disallowed by Her Majesty, or has expired, or has been lawfully repealed, or to prevent the lawful Disallowance or Repeal of any Law.

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TO THE

COMMONWEALTH OF AUSTRALIA CONSTITUTION ACT

AS ALTERED TO 1ST JULY, 1936,

AND TO

CONSTITUTION ALTERATION (SENATE ELECTIONS) 1906,

CONSTITUTION ALTERATION (STATE DEBTS) 1909,

AND

CONSTITUTION ALTERATION (STATE DEBTS) 1928.

INDEX

TO THE

COMMONWEALTH OF AUSTRALIA CONSTITUTION ACT.

AS ALTERED TO 1ST JULY, 1936

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